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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. [redacted]800

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, Committee of the Person and Estate of Ernest Peters, Petitioners,

vs.

DISTRICT OF COLUMBIA, Respondent.

CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND MOTION TO REQUIRE WHOLE RECORD TO BE SENT UP.

BRIEF FOR PETITIONERS.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 855.

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

vs.

DISTRICT OF COLUMBIA, RESPONDENT.

CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND MOTION TO REQUIRE WHOLE RECORD TO BE SENT UP.

BRIEF FOR PETITIONERS.

Statement of the Case.

This case involves the construction and validity of section 9 of the district appropriation bill approved March 3, 1917 (39 Stats. L., 1004, 1046). That section, which is as follows, we shall refer to in this brief as the act of 1917:

> "Sec. 9. That section eleven of the act entitled, 'An Act making appropriations to provide for the

expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' approved September first, nineteen hundred and sixteen, be amended so that the same shall read as follows:

"'SEC. 11. Section six of the act of July first, nineteen hundred and two, entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," is hereby amended by adding, after paragraph two of said section:

"'"That the moneys and credits, including moneys loaned and invested, bonds and shares of stock (except the stock of banks and other corporations within the District of Columbia the taxation of which banks and corporations is hereby provided for) of any person, firm, association, or corporation resident or engaged in business within said District shall be scheduled and appraised in the manner provided by paragraph one of said section six for listing and appraisal of tangible personal property and assessed at their fair cash value, and as taxes on said moneys and credits there shall be paid to the tax collector of said District three-tenths of one percentum of the value thereof: *Provided*, That savings deposits of individuals in a sum not in excess of $500 deposited in banks, trust companies, or building associations, subject to notice of withdrawal and not subject to check, shall be exempt from this tax: *Provided, further*, That such tax on moneys and credits shall not apply to bank notes or notes discounted or negotiated by any bank or banking institution, savings institution, or trust company, nor to savings institutions having no capital stock, building associations, firemen's relief associations, secret and beneficial societies, labor unions, and labor union relief associations, nor to beneficial organizations paying sick or death benefits, or either or both, from funds received from voluntary contributions or assessments upon members of such associations, societies,

or unions; nor shall the provisions of this act apply to life or fire insurance companies having no capital stock, nor to the shares of stock of business companies which by reason of or in addition to incorporation receive no special franchise or privilege, but all such corporations shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed: *And provided further*, That corporations, limited partnerships, and joint-stock associations within said District liable to tax under the laws of said District on earnings or capital stock shall not be required to make any report or pay any further tax under this section on the mortgages, bonds, and other securities owned by them in their own right, but such corporations, partnerships, and associations holding such securities as trustees, executors, administrators, guardians, or in any other manner shall return and pay the tax imposed by this section upon all securities so held by them as in the case of individuals.'"

The petitioners, who, as well as their ward, were conceded in the courts below to be residents of the District of Columbia, under the requirement of the foregoing act, paid to the collector of taxes of the District of Columbia $1,478.26, being the tax on certain intangible property which is described on page 4 of the record in the Court of Appeals. They accompanied this payment with a protest, which appears on pages 5 and 6 of the record.

This suit was brought in the Supreme Court of the District of Columbia to recover from the District the amount so paid, the declaration containing merely the common counts, but being supported by a bill of particulars setting forth the nature of the plaintiffs' claim (1 to 5).

The defendant filed a motion to dismiss the suit (7), a motion equivalent under the rules of the court to a demurrer to the declaration. The general ground of the motion was that the plaintiffs had not set forth a legal cause of action.

After full argument and after several months' delay, the

court sustained the motion (7, 8), without giving any opinion orally or in writing.

From the order of dismissal an appeal was taken to the Court of Appeals of the District. The case having been argued there, that court, as authorized by section 251 of the Judicial Code, certified to this court the following questions:

> "1. Does section 9 of an act of Congress approved March 3, 1917 (39 Stats. L., 1004, 1046), under which said assessment was made, require that moneys and credits, including moneys loaned and invested, bonds and shares of stock * * * of any person, firm, association, or corporation * * * engaged in business within said District, but residing outside of said District, shall be assessed by the District of Columbia for the purpose of taxation?
>
> "2. If it does, is it invalid? And if invalid, does that fact render void the entire section?
>
> "3. Does the section require the District of Columbia to assess the bonds and other securities of the States and their municipal corporations held by residents of the District of Columbia; and if it does, does its invalidity on that account render the entire section void?"

Thereupon, in accordance, with the terms of the same section, the petitioners asked this court to require that the whole record in the case be sent here for its consideration. Action on this petition has been postponed till the hearing on the merits. What those are we proceed to consider:

ARGUMENT.

I.

The act of 1917 contains three provisions which are beyond the power of Congress and render the whole act void.

1. *The act requires every non-resident of the District of Columbia who engages in business therein to pay a tax on*

all his intangible property wherever situated or from whatever source derived with certain exceptions applicable alike to residents and non-residents.

That this is beyond the power of Congress would seem to be plain. There is no precedent for such an attempt, and therefore no decisions in regard to it. But an analogous question concerning the powers of the State governments to tax the property of non-residents has frequently been under consideration by this court, and the reasoning of those cases would seem to be conclusive here.

In the case of State Tax on Foreign-Held Bonds, 15 Wall., 300, 319, it was said:

> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State."

And in the recent case of Looney *vs.* Crane Co., 245 U. S., 178, 188, in which there was involved a question as to the right of a State to tax the property of a corporation which was "wholly beyond the confines of the State and not subject to its jurisdiction," the court said, it may not be doubted that this constituted "a taking without due process," and added:

> "Indeed the cases referred to were concerned in various forms with the identical questions here involved and authoritatively settled that the States are without power to use their lawful authority to exclude foreign corporations by directly burdening interstate commerce as a condition of permitting them to do business in the State in violation of the Constitution, or because of the right to exclude to exert the power to tax the property of the corporation and its activities outside of and beyond the jurisdiction of the State in disregard, not only of the commerce clause, *but of the due-process clause of the Fourteenth Amendment.*" (Italics ours.)

In International Paper Co. *vs.* Massachusetts, 246 U. S., 135, 141, the court again held that a State may not tax property of a foreign corporation which is not located or used in the State, on the ground that such a tax is forbidden both by the interstate commerce provision of the original Constitution and by the due process clause of the Fourteenth Amendment.

As the Fifth Amendment to the Constitution gives the same protection in this regard to the people of the District of Columbia (Callan *vs.* Wilson, 127 U. S., 540, 550) which the due process clause of the Fourteenth Amendment gives to the people of the States, it follows that Congress in exercising its functions as the governing power of the District may not lay a tax on property belonging to non-residents which is not in the District.

To bring this act within the power of Congress, it is necessary to limit the phrase "the moneys and credits" to property within the District of Columbia. But this limitation would then apply to residents and non-residents alike, when Congress had the power and clearly intended to tax the intangible property of residents wherever situated. To so qualify this phrase when applied to the property of both residents and non-residents would be construction contrary to the intent of Congress; to qualify it when applied to the property of residents alone, would be legislation.

Employers' Liability Cases, 207 U. S., 463.

Confronted by this obvious difficulty in the act, the District authorities were called upon to decide what their duty might be by a request for information on the subject by a lawyer who resided in Maryland but practiced his profession in Washington and so was "engaged in business" here. The result was an opinion by the Corporation Counsel, accepted and acted upon by the Commissioners of the District, which concluded thus:

> "I recommend that the assessor be advised that non-resident professional men practicing their professions in the District are taxable to the amount derived from such business in the District, but not money, credits or securities earned elsewhere and brought here for safe keeping."

Accordingly, in the printed circular of instructions to taxpayers by the Commissioners we find this paragraph:

> "Non-resident professional men practicing their professions in the District of Columbia, are taxable to the amount derived from such business in the District, but not money, credits, or securities earned elsewhere, and brought here for safe keeping."

Why this distinction is made between professional men and other non-resident persons and corporations engaged in business in Washington we have to leave to opposing counsel to explain. But there is obviously not the slightest warrant in the act itself to justify requiring non-residents carrying on business here to keep their intangibles purchased out of the earnings of their local business in the District separate from their other intangibles, and taxing the one and exempting the others.

Nor has Congress the power to levy a tax upon non-residents on their moneys, credits and securities merely because they were derived from business done within the District of Columbia. This power is limited to property forming part of the capital used in such business, and when that property is withdrawn from the business the right to tax is gone.

In the case of Buck *vs.* Beach, 206 U. S., 392, 406, this court, in holding that the State of Indiana had no power to levy a tax upon notes merely kept in that State by a resident of Ohio, said:

> "There are no cases in this court where an assessment such as the one before us has been involved. We have not had a case where neither the party

> assessed nor the debtor was a resident of or present in the State where the tax was imposed, and where no business was done therein by the owner of the notes or his agent relating in any way to the capital evidenced by the notes assessed for taxation. We cannot assent to the doctrine that the mere presence of evidences of debt, such as these notes, under the circumstances already stated, amounts to the presence of property within the State of taxation."

And in the case of Metropolitan Life Ins. Co. v. New Orleans, 205 U. S., 395, 402, this court said:

> "In this case, the controlling consideration was the presence in the State of the capital employed in the business of lending money, and the fact that the notes were not continuously present was regarded as immaterial. * * * We are not dealing here merely with a single credit or a series of separate credits, but with a business."

It will be noted that the act here involved does not purport to levy a tax upon the business of a non-resident, but upon the money and credits of a non-resident engaged in business in the District.

Nor can anything be found in the law which justifies exempting intangible property of non-residents who are carrying on business here when it is actually located in the District. The express words of the statute require that such persons or corporations must schedule all their intangibles, wherever they may be, which are not specifically exempted.

In the Court of Appeals it was suggested, rather than argued, by opposing counsel that this tax on non-residents engaged in business here might be regarded as a tax on foreign corporations for the privilege of doing business in the District. But (waiving the question of the power of Congress in that regard) this requires that the same view should be taken as to non-resident individuals and also as to residents both corporate and individual. If foreign cor-

porations are taxed for the privilege of engaging in business here, so are the individual non-residents, and necessarily by the same rule residents are taxed for the privilege of residing in the District. No separation of these several classes can be made without rewriting the act. But clearly the act is not a tax on persons or on business. It is a tax on property and as such its validity is to be determined.

It was further suggested in the courts below that, even if this provision of the act is invalid as to non-resident persons and corporations engaged in business in the District, it may be enforced against all persons who, like the petitioners in this case and their ward, are residents. But this would place upon residents alone a burden which Congress plainly intended should be shared by non-residents who come here to compete in business with residents. If this view of the act should be upheld a corporation organized under the laws of one of the States or under the laws of any foreign country could carry on business in Washington next door to a District corporation engaged in the same business and escape this tax altogether. A District corporation could surrender its charter, take out a new one from Maryland or Virginia and go on with its business free from this tax. Obviously this is not what Congress intended.

The only serious question on this branch of the case, concern as to which undoubtedly led the Court of Appeals to certify it to this court for determination, remains to be considered. It is this: May the court, notwithstanding the invalidity of the act in this regard, enforce it in so far as its provisions are constitutional, thereby permitting the taxation of non-residents on their intangible property within constitutional limits?

But this court in several thoroughly considered cases has held that this may not be done.

In United States *vs.* Reese *et al.*, 92 U. S., 214, 221, an act of Congress making it a crime for inspectors of election to wrongfully refuse to receive the vote of a citizen when pre-

sented under certain circumstances, was held void because not confined in its operation to a discrimination on account of race, color, or previous condition of servitude. To the suggestion that the act might be enforced so far as its inhibitions were within the power of Congress the court said:

> "The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the constitution. The question, then, to be determined, is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. * * *
>
> "To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty."

In the Employers' Liability Cases, 207 U. S., 463, 500, holding invalid the first employers' liability act which imposed upon carriers engaged in interstate commerce certain obligations to their employees, it was urged that although the general language of the act embraced the case of an employee engaged solely in intrastate work, the court could limit this broad language by construction and so enforce the law in so far as it was within the power of Congress. But it was held that this would be legislation, not construction, the court saying:

> "So far as the face of the statute is concerned, the argument is this, that because the statute says carriers engaged in commerce between the States, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words 'any employee' as found in the statute should be held to mean any employee when such employee is engaged only in interstate commerce. But this would require

us to write into the statute words of limitation and restriction not found in it. But if we could bring ourselves to modify the statute by writing in the words suggested the result would be to restrict the operation of the act as to the District of Columbia and the territories. We say this because immediately preceding the provision of the act concerning carriers engaged in commerce between the States and Territories is a clause making it applicable to 'every common carrier engaged in trade or commerce in the District of Columbia or in any territory of the United States.' It follows, therefore, that common carriers in such territories, even although not engaged in interstate commerce, are by the act made liable to 'any' of their employees, as therein defined. The legislative power of Congress over the District of Columbia and the territories being plenary and not depending upon the interstate commerce clause, it results that the provision as to the District of Columbia and the territories, if standing alone, could not be questioned. Thus it would come to pass, if we could bring ourselves to modify the statute by writing in the words suggested; that is, by causing the act to read 'any employee when engaged in interstate commerce,' we would restrict the act as to the District of Columbia and the territories, and thus destroy it in an important particular. To write into the act the qualifying words, therefore, would be but adding to its provisions in order to save it in one aspect, and thereby to destroy it in another; that is, to destroy in order to save and to save in order to destroy.

* * * * * * *

"The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose. Equally clear is it, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal

provisions by separating them from the illegal. But this applies only to a case where the provisions are separable and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated. All these principles are so clearly settled as not to be open to controversy. They were all, after a full review of the authorities, restated and reapplied in a recent case. Illinois Central Railroad *vs.* McKendree, 203 U. S., 514, and authorities there cited."

* * * * * * *

"As the act before us by its terms relates to every common carrier engaged in interstate commerce and to any of the employees of every such carrier, thereby regulating every relation of a carrier engaged in interstate commerce with its servants and of such servants among themselves, we are unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which it was within the power of Congress to regulate."

In Guinn *vs.* U. S., 238 U. S., 347, the validity of a provision of the Constitution of Oklahoma was involved. It required a literary test for voters but excepted from the test voters who had the right to vote before 1866—the ordinary so-called grandfather clause, aimed at the colored voter. Holding the grandfather clause void the court was urged to maintain the literary test without the excepting clause. But the court said that would be to require a literary test from the 1866 class in the face of the plain language excusing them therefrom. So the whole provision failed.

In Harrison *vs.* St. L. & S. F. R. R., 232 U. S., 318, an act of the Oklahoma legislature was held void which unrea-

sonably interfered with the right of foreign corporations, when sued in the State courts, to remove the case to the Federal courts.

To the argument that the act should be construed "simply as an effort on the part of the State to exercise *reasonable* control over corporations within its borders" the court said (p. 333):

> "The argument * * * comes at last to the contention that the more plainly an enactment violates the Constitution, the more urgent the duty of deciding that it does not do so."

In Williams *vs.* Talladega, 226 U. S., 404, there was involved the question whether a city ordinance could be sustained which taxed telegraph companies doing business in the States. The State court had held that the ordinance could not be construed as applying only to business other than the sending of messages by the General Government. Because Government business was not excluded, this court said (p. 419):

> "This part of the license exacted necessarily affects the whole and makes the tax unconstitutional and void."

In the case of Connolly *vs.* Union Sewer Pipe Co., 184 U. S., 540, where the court had under consideration a trust statute of Illinois declaring that the provisions of the act should not apply "to agricultural products or live stock while in the hands of the producer or raiser," it was held that, as this exemption discriminated against persons engaged in other businesses, the whole act was, therefore, void. The court said (p. 565):

> "If the latter section be eliminated as unconstitutional, then the act, as it stands, will apply to agriculturists and live stock dealers. Those classes would in that way be reached and fined, when, evidently,

> the legislature intended that they should not be regarded as offending against the law even if they did combine their capital, skill or acts in respect of their products or stock in hand. * * * The result is that the statute must be regarded as an entirety, and in that view it must be adjudged to be unconstitutional."

And the same holding was made in the case of Spraigue *vs.* Thompson, 118 U. S., 90, 94, where a statute relating to the employment of pilots exempted from its operation ships from certain ports. The contention was there made that, although the exempting clause was invalid, it was separable from the balance of the act. The court, however, said:

> "But the insuperable difficulty with the application of that principle of construction to the present instance is, that by rejecting the exceptions intended by the legislature of Georgia the statute is made to enact what confessedly the legislature never meant. It confers upon the statute a positive operation beyond the legislative intent, and beyond what any one can say it would have enacted in view of the illegality of the exceptions."

Furthermore, it must be borne in mind that this is not a remedial statute, to be liberally construed, but a taxing statute, containing penal provisions, to be strictly construed. Gould *vs.* Gould, 245 U. S., 151. This distinction is clearly pointed out in Butts *vs.* Merchants Transp'n Co., 230 U. S., 126. There, an action had been brought by a colored woman to recover penalties under the civil rights act on the ground that she had been denied certain rights and privileges on the high seas. The act in question provided "That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement," and "that any person who shall violate

the foregoing section * * * shall, for every such offence, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby." This court had previously held that the act was void as applied to the States (Civil Rights Cases, 109 U. S., 3). But it was contended that the act was valid as to violations on the high seas, over which Congress had jurisdiction. The court, however, held the whole act void. In distinguishing the case from El Paso & N. Ry. Co. *vs.* Gutierrez, 215 U. S., 87, holding that the Employers' Liability Act, though void as to the States, could be enforced in the Territories and in the District of Columbia, it was said (p. 137):

> "That act was quite unlike the sections now before us in two important particulars: 1. It was not a penal or criminal statute, to be strictly construed, but was a civil and purely remedial one, to be construed liberally. 2. Its applicability to the District of Columbia and the Territories did not depend upon the same words which made it applicable to interstate commerce. * * *
>
> "Here it is not possible to separate that which is constitutional from that which is not. Both are dependent upon the same general words, 'within the jurisdiction of the United States,' which alone indicate where the sections are to be operative."

In Baldwin *vs.* Franks, 120 U. S., 678, 685, section 5519 of the Revised Statutes was held to be wholly void because its general language went beyond the power of Congress in providing for the punishment of conspiracies to deprive persons of their rights. Urged to give the law effect in so far as it was within the power of Congress, the court said:

> "In support of this argument reliance is had on the well-settled rule that a statute may be in part constitutional and in part unconstitutional, and that under some circumstances the part which is constitutional will be enforced, and only that which is unconstitutional rejected. To give effect to this rule, however,

> the parts—that which is constitutional and that which is unconstitutional—must be capable of separation, so that each may be read by itself. This statute, considered as a statute punishing conspiracies in a State, is not of that character, for in that connection it has no parts within the meaning of the rule. Whether it is separable, so that it can be enforced in a Territory, though not in a State, is quite another question, and one we are not now called on to decide. It provides in general terms for the punishment of all who conspire for the purpose of depriving any person, or any class of persons, of the equal protection of the laws, or of equal privileges or immunities under the laws. A single provision, which makes up the whole section, embraces those who conspire against citizens as well as those who conspire against aliens—those who conspire to deprive one of his rights under the laws of a State, and those who conspire to deprive him of his rights under the Constitution, laws, or treaties of the United States. The limitation which is sought must be made, if at all, by construction, not by separation. This, it has often been decided, is not enough."

And in Oklahoma *vs.* Wells, Fargo & Co., 223 U. S., 298, 302, this court had under consideration a statute providing for the taxation of express companies upon "such proportion of said per centum of its gross receipts as the portion of its business done within the State bears to the whole of its business," and "for the purpose of determining the amount of such tax" required such companies to report under oath their gross receipts "from every source whatsoever." In holding void the entire act because it included income from investments in bonds and land outside of the State, the court said:

> "Whether the statute could be construed as separable of course would be ultimately for the State court in any event. Telegraph Co. *vs.* Texas, 105 U. S., 460. But we see no possible construction on which it could be upheld without being so remodeled that

it would be a mere speculation whether the legislature would have passed it in the new form. For, to recur to the statute, it is not simply a tax on all gross receipts within the State, which possibly might be read as intended to reach such receipts as it could, even if less than all, Ratterman *vs.* Western Union Telegraph Co., 127 U. S., 411, it is a tax on a proportion of total gross receipts a considerable part of which, as we have explained, the State has no right to tax. Neither the court below nor this court can reshape the statute simply because it embraces elements that it might have reached if it had been drawn with a different measure and intent."

To the same effect are:

Trade-Mark Cases, 100 U. S., 82.

Illinois Central R. Co. *v.* McKendree, 203 U. S., 514.

Therefore, if, as we contend, the provision of the act here involved levying a tax upon intangible property of non-residents is void as to such property which is not in the District of Columbia the whole act must fall. It is a well-recognized fact that, because of the limited area of the District of Columbia, a large portion of the business therein is transacted by non-resident individuals, firms, and corporations. If only residents are subjected to the tax the result would be a discrimination against them not intended by Congress. Residents engaged in business here would be placed at a disadvantage in competing with non-residents.

It was contended in the court below that plaintiffs are not in a position to question the validity of the act on the ground that it unlawfully taxes non-residents, since plaintiffs do not come within that class. But if, as we respectfully submit, this renders void the entire act, there is left no authority for the taxation of plaintiffs thereunder, and they are prejudiced by its attempted enforcement. It would be most remarkable if plaintiffs and others in a similar position must continue to pay taxes under a void statute until the question of its in-

validity is raised by a non-resident. If this were the law the Commissioners of the District could, as they have attempted to do, read into the act limitations not there and enforce it only to the extent of the power of Congress, thus preventing its validity from being questioned, and, in effect, rendering valid that which is invalid. The power of amendment is vested alone in Congress, and not in the courts or the District Commissioners.

Counsel for defendant in their brief in the court below relied upon Farmers Bank *vs.* Minnesota, 232 U. S., 516, in support of their contention. But that case involved the validity of a State statute, and cited in support of its holding the case of Hatch *vs.* Reardon, 204 U. S., 152, 160, where the reasons for the rule generally applied to State statutes are fully set forth, as follows:

> "But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the *tax laws of a State* on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the State law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all. Supervisors *vs.* Stanley, 105 U. S., 305, 311; Clark *vs.* Kansas City, 176 U. S., 114, 118; Lampasas *vs.* Bell, 180 U. S., 276, 283, 284; Cronin *vs.* Adams, 192 U. S., 108, 114. If the law is valid when confined to the class of the party before the court, *it may be more or less of a speculation to inquire what exceptions the State court may read into general words, or how far it may sustain an act that partially fails.* With regard to taxes, especially, perhaps it might be assumed that the legislature meant them to be valid to whatever extent they could be sustained, or some other peculiar principle might be applied

See *e. g.* People's National Bank *vs.* Marye, 191 U. S., 272, 283." (Italics ours.)

But if it is apparent that the validity of a State statute cannot be sustained by any legal rule of construction, this court will declare the whole act void.

Oklahoma *vs.* Wells, Fargo & Co., 223 U. S., 298, 302.
McFarland *vs.* American Sugar Co., 241 U. S., 79.

In Sully *vs.* American National Bank, 178 U. S., 289, 299, this court said:

> "Under this provision of the section, creditors of the land company residing in Tennessee, whose debts accrued prior to the filing and registration of the Sully, trustee, mortgage were by the decree of the court below preferred in payment over the mortgagee. By reason of such preference Carhart did not receive what he would have received, but for the preference so given. He claims that this preference in favor of resident creditors, whose debts existed when his mortgage was registered, is an illegal discrimination against him as a non-resident mortgagee, because the statute, as he says, while directing such a discrimination against a non-resident mortgagee, does not permit it as against a resident mortgagee. Such a discrimination, if it existed, is invalid within the decision of Blake *vs.* McClung, *supra*.
>
> "It is subjected, however, on the part of the defendants in error, that this is a merely abstract or moot question, because there are no resident mortgagees, and their rights have not, therefore, been determined. The objection is not well taken. Although there are no resident mortgagees in this case, yet the decree of the court below, following the statute, has postponed the payment of the mortgage, in favor of resident creditors whose debts accrued prior to the registration of that mortgage. If the statute does not permit such postponement against a resident mortgagee, then the postponement in the case of a non-resident mortgagee would be invalid. The postponement has in

> fact been made as against the non-resident mortgagee, and whether that postponement was legal and valid is no mere abstraction, because by reason thereof this non-resident mortgagee has actually suffered a loss in the payment of his mortgage. It is, therefore, entirely immaterial whether in this particular case there are or are not resident mortgagees."

So, here, if the Intangible Tax Law is wholly void, any assessment made thereunder is invalid, and plaintiffs have suffered such a loss in paying the same under protest as will enable them to maintain this action.

The law here involved is not a State statute, but an act of Congress which this court has jurisdiction to construe. In no case has this court ever refused to hold an act of Congress void on the ground that the party assailing the act did not belong to the class discriminated against, except in these cases where the provisions of the act were found to be separable.

This distinction is pointed out in United States *vs.* Delaware & Hudson Co., 213 U. S., 366, 417, as follows:

> "The question of the constitutionality of the clause relating to penalties is wholly separable from the remainder of the clause, and, therefore, may be left to be determined should an effort to enforce such penalties be made."
>
> See also Rainey *vs.* United States, 232 U. S., 310, 315.

In the Employers' Liability Cases, 207 U. S., 463, actions were brought to recover damages occasioned by the death of the respective intestates while serving as firemen on locomotives actually engaged in moving *interstate commerce trains*. This court, after holding that Congress had power to regulate the relation of master and servant in matters of *interstate commerce*, nevertheless declared the whole act void (except as to the District of Columbia and the Territories) on the

ground that it, by its terms, also embraced intrastate commerce.

In United States *vs.* Reese *et al.*, 92 U. S., 214, two inspectors of election were indicted for refusing to receive and count the vote of a person of African descent. The indictment was based upon an act of Congress making it an offense to prevent a citizen from exercising the right to vote. This court, affirming the decision of the lower court sustaining a demurrer to the indictment, held that, although Congress had the power to enact a law covering the offense there charged, yet the whole act was void, because its terms were broad enough to cover acts beyond its constitutional jurisdiction.

And in Baldwin *vs.* Franks, 120 U. S., 678, Baldwin had been arrested for a violation of section 5519 of the Revised Statutes in conspiring with others to deprive certain subjects of the Emperor of China of rights granted under treaties. It was held that, while Congress could provide for the punishment of persons conspiring to deprive persons of their rights under the Constitution, laws, or treaties of the United States, the whole act was void, on the ground that it also applied to conspiracies to deprive citizens of their rights under State laws.

To the same effect are:

Trade-Mark Cases, 100 U. S., 82.

Illinois Central R. Co. *vs.* McKendree, 203 U. S., 514.

In the five cases last referred to, this court apparently did not regard the question of the right to assail the validity of the acts there involved as worthy of consideration.

2. *The act requires a non-resident engaged in business in this District to pay a tax on all his credits or choses in action, whether due from residents or non-residents, including those which have not been reduced to concrete form. As to non-residents this is beyond the power of Congress even as to credits arising out of District business.*

By a series of cases in this court, it is settled that a State may tax the intangible property of a non-resident forming part of the capital of business carried on by the non-resident in the taxing State, except that no power exists to tax credits which have not been reduced to concrete form when due from non-residents of the State.

State Tax on Foreign-held Bonds, 15 Wall., 300, 320.
Board of Assessors *vs.* Comptor National, 191 U. S., 388, 402.
Liverpool Ins. Co. *vs.* Orleans Assessors, 221 U. S., 346, 356.
Buck *vs.* Beach, 206 U. S., 392, 406, 407.

In the ordinary course of business, non-resident merchants and manufacturers engaged in business in Washington sell their goods to non-residents on open account. The resulting credits exist only in the minds of the buyer and seller. They are mere choses in action. They are debts due from persons or corporations who are not within the District of Columbia. So, a loan may be made by a non-resident engaged in business here to another non-resident, no written obligation being taken from the borrower. In these and all similar cases a credit arises, but there is nothing which can be made the subject of taxation here.

Opposing counsel will insist that the court, to save the constitutionality of the act, should construe it as not including credits of non-residents which are not taxable under the rule laid down in the cases above cited. But as already shown under the next preceding head of this brief, this would necessitate limiting in the same way the taxable credits of residents also, contrary to the obvious intention of Congress. There is no escape from the conclusion that the whole act falls except by doing that under the guise of construction which amounts to legislation.

3. The act taxes bonds and similar obligations whoever may be the obligor. It, therefore, necessarily includes obligations of the States and their municipal corporations. But these Congress may not tax. Consequently the whole provision in this regard fails.

In Farmers' Bank *vs.* Minnesota, 232 U. S., 516, in which case the question involved was the right of the State of Minnesota to tax the bonds issued by municipalities in Indian Territory and the Territory of Oklahoma, the court, after holding that "the Territory of Oklahoma, therefore, was an instrumentality established by Congress," and that "to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them," said (p. 526):

> "It is on this ground that United States bonds have always been held exempt from taxation under authority of the States. By like reasoning it has come to be recognized that bonds issued by the States are not taxable by the Federal Government, and it was upon this ground that this court held, in Pollock *vs.* Farmers' Loan & Trust Co., 157 U. S., 429, 584, that the income tax provisions of the act of August 15, 1894, were unconstitutional in that they imposed a tax upon the income derived from municipal bonds issued under the authority of the States."

And in the Pollock case (157 U. S., 429), above referred to, the court said:

> "As the States cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State.
>
> "A municipal corporation is the representative of the State and one of the instrumentalities of the State government. It was long ago determined that the

> property and revenues of municipal corporations are not subjects of Federal taxation. Collector *vs.* Day, 11 Wall., 113, 124; United States *vs.* Railroad Company, 17 Wall., 322, 332."

There is no room for argument on this point as to what the act requires. It was so construed by the authorities charged with the duty of enforcing it. In at least two sets of circulars which were sent to taxpayers soon after the law was passed instructing them how to fill out the blank forms prepared for them, they were told that:

> "Municipal or State bonds are not exempt from taxation."

This was corrected in later editions of the circular, and in both courts below counsel for the District conceded that obligations of the States and their municipalities could not be taxed by the General Government. Thus there arose the question whether, although void as to State obligations, the act may still be enforced as to other classes of obligations which Congress may lawfully tax.

The cases in this court to which we have previously referred would seem to be conclusive on this point. To uphold the law at all the court must write into it an exception as to State obligations rendering non-taxable what Congress has said shall be taxed and placing the whole burden on other classes of obligations in the absence of anything in the act to indicate that Congress intended such a result.

By the income tax act, which was held void in Pollock *vs.* Farmers' Loan & Trust Co., 158 U. S., 601, 635, 637, Congress undertook to levy a tax upon incomes in general terms. Because the act did not exclude income derived from real estate and invested personal property, and was therefore in effect a direct tax not apportioned among the States as required by the Constitution, it was held that it could not be enforced at all. To the suggestion that it should be enforced

to the extent that it was not unconstitutional, the court replied:

> "Being invalid as to the greater part, and falling, as the tax would, if any part were held valid, in a direction which could not have been contemplated except in connection with the taxation considered as an entirety, we are constrained to conclude that sections twenty-seven to thirty-seven, inclusive, of the act * * * are wholly inoperative and void."

II.

The provisions of the act of 1917 as to the tax on "shares of stock" are so vague that it is impossible to determine what shares are taxable and what are exempt; so that so much of the act as relates to them is void. Consequently, the whole acts falls.

As to shares of stock the act has the following provisions:

1. General language requiring all such shares to be listed.

2. Exception of shares of stock of corporations within the District the taxation of which "is hereby provided for."

3. Exemption of shares of stock of "business companies" which by reason of or in addition to incorporation "receive no special franchise or privilege."

Residents of this District and non-residents engaged in business here hold shares of stock in thousands of "business" corporations holding charters—granted either by special act or by general incorporation laws—from every State in this Union, and doubtless from every civilized country in the world. Probably no two of these charters and no two of such general incorporation statutes are alike. In the case of every taxpayer—person, firm, or corporation—the question arises

whether the shares of stock which the taxpayer holds were issued by a corporation receiving some special franchise or some special privilege. This necessarily involves an examination of the corporation's charter, and, in most cases, an examination of the general incorporation law under which the charter was obtained. Imagine the predicament of the taxpayer, sending for all the charters and general incorporation laws involved in his case, and then trying to determine which of them has received a *special franchise* or some *special privilege* within the meaning of this statute.

In the Supreme Court of the District of Columbia, counsel for the District, as to this, said in their brief:

> "It has been suggested that the foregoing exemption applies to non-residents as well as resident companies. Congress, however, was speaking of District corporations and provided that all corporations should be taxed as individuals in similar lines of business; moreover, this exemption relates to the exemption of certain corporations from taxation and not to the exemption of individuals, who are not concerned with this classification."

In the Court of Appeals opposing counsel again contended that this exemption applies not to shares of stock at all, but to corporations. That is to say, the District insists that the question is whether certain *corporations* only shall be exempted from paying this tax because they have no special franchise or privilege.

But if we adopt the contention of the corporation counsel, the exempting clause nullifies itself. It would read: "That such tax on moneys and credits shall not apply to * * * business companies * * *, but all such corporations shall be rated, assessed, and taxed as individuals," etc. Thus, business companies are exempted from the tax in one clause, and subjected to it in the next.

It is a singular fact that, while the corporation counsel make this contention in court, yet every edition of the cir-

cular of instructions to taxpayers which the District authorities have issued from time to time contains, under the head of "Exemptions," the following paragraph:

> "3. Shares of stock of any business company incorporated in the District of Columbia, and receiving no special franchise or privilege in addition to incorporation, whose property real and personal or capital stock, is subject to taxation here."

More singular still is it that, although counsel for the District were urged by us, both orally and in writing in both courts below, to inform the court what meaning they give to the phrase "special franchise or privilege," they have declined to do so.

Thus, the individual taxpayer is instructed that he is obliged to return in his schedule only the shares of stock which are not within this exemption; the court is told that corporations only, not the individual taxpayer, is entitled to the exemption; and, so far, the court has not been told what the exemption is supposed to mean. We can only indulge the hope that counsel for the District in this court will depart from their policy of silence in this regard.

This difficulty is intensified by what follows this exempting clause in the act. It is said that "all such corporations shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed and taxed."

If anything in this act is clear, it is that the taxpayer, individual or corporate, is to include in his return shares of stock in foreign as well as in District corporations. The language of the act just quoted requires the taxation of *all* corporations which receive no "special franchise or privilege," as if they were individuals. Yet it is inconceivable that the author of this act could have supposed that for the purpose of paying the expenses of the District government Congress could levy a tax on all the corporations in the world. The only escape from this difficulty is to assume,

in the face of the most explicit language to the contrary, that throughout the act only shares of stocks in District corporations are referred to.

In this dilemma counsel for the District in the Court of Appeals, sought to clarify the situation by referring to legislation relating to the taxation of tangible property in this District. What that is we proceed to examine.

III.

There is nothing in the other acts of Congress relating to taxation in the District of Columbia which obviates in any degree any of the objections to the act of 1917 above set forth.

The District appropriation bill, providing for the fiscal year ending June 30, 1903 (32 Stats. L., 590, 617), carries by section 6 a comprehensive system of taxation in the District of Columbia. It first amends the statutes relating to the taxation of real estate and then imposes a tax on tangible personal property and a license tax on many kinds of business. A copy of this section forms an appendix to this brief. It will be referred to by us as the act of 1902.

In the District appropriation bill, providing for the fiscal year ending June 30, 1917 (39 Stats. L., 676, 717), there was placed an amendment to the act of 1902 by which, for the first time, Congress undertook to tax intangible property in the District of Columbia. This amendment, which we shall call the act of 1916, is as follows:

> "Sec. 11. Section six of the act of July first, nineteen hundred and two, 'An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes,' is hereby amended by adding, after paragraph two of said section:
>
> "That the moneys and credits, including moneys loaned and invested, bonds and shares of stock (ex-

cept the stock of banks and other corporations within the District of Columbia the taxation of which banks and corporations is herein provided for) of any person, firm, association, or corporation resident or engaged in business within said District shall be scheduled and appraised in the manner provided by paragraph one of said section six for listing and appraisal of tangible personal property, and assessed at their fair cash value, and as taxes on said moneys and credits there shall be paid to the tax collector of said District four-tenths of one per centum of the value thereof: *Provided*, That savings deposits of individuals in a sum not in excess of $500 deposited in banks, trust companies, or building associations, subject to notice of withdrawal and not subject to check, shall be exempt from this tax: *Provided further*, That a joint committee consisting of the Committee on the District of Columbia of the Senate and the Committee on the District of Columbia of the House of Representatives is hereby appointed to make by subcommittee or otherwise a careful and exhaustive study of the tax laws of the District of Columbia, including license taxes, with a view of recommending such changes in the laws as the joint committee may deem fair and equitable, report to be made to the Congress during the next session."

It will be seen that the act of 1916 is an amendment to the act of 1902, and that the act of 1917 is a substitute for the act of 1916; so that the latter is to be read as a part of the act of 1902.

The District authorities correctly held that the act of 1916 was not operative during the fiscal year in which it was passed. Before the next fiscal year it was superseded by the act of 1917. We are not therefore concerned with it except in so far, if at all, as it may aid in the construction of the later act.

There is nothing in the act of 1902 which relieves the act of 1917 of the objections growing out of its attempt to tax intangible property of non-residents not within the

District, or not reduced to concrete form, or its failure to exclude State obligations from taxation by the general Government. It does, however, contain provisions which are claimed by counsel for the District to lead to an intelligible construction of the exempting phrase "special franchise or privilege."

By paragrph 5 of the act of 1902 a tax is imposed upon the gross earnings of incorporated banks and trust companies and upon all gas, electric lighting and telephone companies in the District. It continues the then existing tax on the gross receipts of street railroad companies.

Paragraph 8 imposes a tax on the value of the capital stock of all corporations organized in the District or under the law of any State or Territory chiefly for the purpose of transacting business in the District, but adds this proviso:

> "That nothing in this act contained shall be construed to include newspaper, real estate, and mercantile companies, which by reason of incorporation receive no special franchise or privilege; but all such corporations shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed."

It is urged by counsel for the District that this language aids in clearing up the meaning of the corresponding proviso of the act of 1917. To our mind it only adds to the confusion of ideas.

Did Congress intend by this proviso of 1902 to declare that newspaper, real estate and mercantile companies as a separate class of corporations receive no special franchise or privilege? This seems to be absurd; for it is impossible to conceive of any distinction in this regard between corporations that print newspapers and those that print lawyers' briefs or court records, between corporations that buy and sell real estate and those that buy and sell bonds and stocks, or between mercantile companies and manufacturing companies.

If, on the other hand, Congress intended to have the assessor distinguish between newspaper, real estate, and mercantile corporations that receive no special franchise or privilege and those of the same classes that do, we are left in the dark as to what is meant by a "special franchise or privilege" in the act of 1902, just as we are left in the dark as to what those words mean in the act of 1917.

But opposing counsel have suggested that this exemption refers only to public service corporations—the street railway, gas, telephone and electric lighting companies—and the banks which do get special privileges, and that the exemption under consideration applies to ordinary business corporations. But this leads to a still greater difficulty in construing the act of 1917, with which only we are now directly concerned. At the beginning of that act we find that shares of stock of banks and other corporations within the District of Columbia the taxation of which is "hereby" provided for are excepted from taxation under the act. Under this exception the holder of shares of stock of the gas, electric light, and telephone corporations of the District and in the District banks and trust companies is not required to include any of them in his return. This, say counsel, because they *do* receive special franchises and privileges by virtue of their incorporation. Now, if shares of stock in all District corporations which do not receive such special franchise or privilege are excepted by the proviso we are considering, it follows that no tax can be levied under the law upon the shares of stock of any District corporation.

To this absurd conclusion the District authorities have been forced in their efforts to give intelligible effect to that which is unintelligible. In answer to the inquiry of a taxpayer on this subject, the board of personal tax appraisers, in a letter dated July 30, 1920, replied:

> "Referring to your inquiry as to what is the meaning of the phrase of the law—'nor to the shares of business companies which by reason of or in addi-

> tion to incorporation receive no special franchise or privilege,'—you are advised that this particularly applies to the shares of stock of corporations whose tangible assets are located in the District of Columbia, but who receive no special franchise or privilege through acts of Congress. In accordance with the above, the shares of stock of companies incorporated in the District of Columbia whose tangible assets are located here would be exempt in this jurisdiction under the intangible tax law."

The act of 1916 contains nothing which throws any light on this subject. It results that, even considering together as *in pari materia* the acts of 1902, 1916, and 1917, it is out of the question for the court, much less for the taxpayer, to determine what are the shares of stock which were intended to be exempted under this proviso.

Since shares of stock in corporations must, therefore, be altogether excluded from taxation under this act, because it is impossible to determine what shares are exempt and what are taxable, the act cannot be sustained in any part. This class of intangible property is probably greater than any other. To omit it, and yet tax the other classes of intangibles, would be a clear departure from the intention of Congress.

In International Harvester Co. *vs.* Kentucky, 234 U. S., 216, a State statute was held void which made it a crime for corporations to combine to control prices "with the effect of fixing a price that was greater or less than the real value," the court saying that the defendant in that case was not bound to "say what would have been the price in an imaginary world." That case was followed in American Seeding Machine Co. *vs.* Kentucky, 236 U. S., 660, in which case the court said that in the Harvester Company case the Kentucky law was held invalid because it "offered no standard of conduct that it was possible to know."

IV.

The proceedings in Congress relating to the acts of 1902, 1916 and 1917 contain nothing which obviates any of the objections to the act of 1917.

As this court has held that within certain limitations the proceedings in the House and Senate may be examined in aid of the construction of ambiguous language in statutes (United States *vs.* St. Paul, &c., R. Co., 247 U. S., 310, 318), we have ventured to follow the passage through Congress of the District appropriation bills to which the acts of 1902, 1916 and 1917 were respectively attached to see what light may thereby be thrown upon those clauses of the act of 1917 which we have criticised adversely above. Leaving it to the court to determine to what extent, if at all, what we have discovered in this way may be taken into consideration in passing upon our foregoing objections to the act of 1917 we submit the result of our investigations.

By an act approved June 11, 1878 (20 Stat. L., 102), it was provided, among other things, that one-half of the expenses of the District should be paid by the General Government and the other half by District taxation. This provision has been in effect ever since, except that for the current fiscal year the proportion has been fixed at forty per cent by the United States and sixty per cent by the District.

About ten years ago some members of Congress sought to have this half-and-half system, as it is called, done away with on the ground that it had resulted in the people of the District escaping taxation commensurate with that of other cities of approximately the same population. This was disputed by other members of Congress. The result was an act approved March 3, 1915 (38 Stat., 894), authorizing the appointment of a joint committee of Congress to investigate and report on the subject of the fiscal relations between the

United States and the District of Columbia. This committee was composed of three members of the Senate and three members of the House of Representatives. It sat for several weeks, taking a great mass of evidence, written and oral, and hearing arguments for and against the half-and-half plan. In January, 1916, the joint committee unanimously reached and expressed the following conclusion:

> "The annual tax in Washington is approximately $16 per capita.
>
> "In the judgment of your committee this is a reasonable tax levy at this time, especially when we consider, as we must, that a large proportion of the population here pays but a small amount of the taxes imposed."
>
> Vol. 1, page XXII, Report of Committee on Fiscal Relations between the United States and the District of Columbia.

When the District appropriation bill, which ultimately had added to it the act of 1902, reached the Senate it carried a provision for the taxation of intangible property in this District. The Committee on Appropriations of the Senate in lieu of a tax on intangible property, submitted a measure levying a tax on the gross receipts, capital stock or surplus of certain classes of corporations and a system of license taxes. The Senate approved this amendment, the resulting conference committee of the two houses accepted the amendment, and so the act of 1902 came into being (see appendix).

It will be noted that the drastic taxation of this act was proposed as a substitute for the direct taxation of intangible property as provided in the bill as it came from the House. In addition to the taxes which it levies on public service corporations, banks, trust companies and other corporations, it imposes a long list of license taxes on the doing of a great variety of businesses—a list the like of which for extent and variety we believe is not to be found anywhere else in the United States.

When the bill making appropriations for District expenses for the fiscal year ending June 30, 1917, was sent by the House to the Senate it contained nothing relating to taxation. It came from the Committee on Appropriations of the Senate without any such provision. But after the committee amendments had been disposed of, Senator Sterling, on the 2d day of August, 1916, submitted the following amendment to the act of 1902:

> "That the moneys and credits, including moneys loaned and invested, bonds and shares of stock (except the shares of stock of banks and other corporations within the District of Columbia, the taxation of which banks and corporations is herein otherwise provided for), of any person, firm, association, or corporation resident or engaged in business in said District shall be scheduled and appraised in the manner provided by paragraph 1 of said section 6 for listing and appraisal of tangible personal property and assessed at their fair cash value, and as taxes on said moneys and credits there shall be paid to the tax collector of said District four-tenths of 1 per cent of the value thereof."
>
> 53 Cong. Record, part 12, page 11946.

This amendment at once gave rise to an animated debate which will be found on pages 11946 to 11960 of 53d Congressional Record, part 12. All through the discussion it appears that the object of the amendment was to reach a class of residents of the District who are termed by various Senators "tax dodgers"—intimating that residents of the States where intangible property is taxed become residents of the District, really or ostensibly, to escape from that form of taxation. Thus, Senator Gallinger having reminded the Senate of the taxes levied on corporations by the act of 1902, and especially of the extremely severe system of license taxes therein contained, Senator Gronna (the colleague of the proposer of the amendment) said, page 11951:

> "I believe that we will all agree that if the pending amendment becomes a law it will simply tax a few of the tax dodgers, a few of the people who come here purposely to evade taxation; and not 1 per cent of the class of people whom the Senator from New Hampshire has enumerated would be affected by the pending amendment."

So Senator Vardaman said of the amendment (11957) that it was "a question affecting the rich folk."

Other Senators during this debate said that the proposed tax on intangible property would enable Congress to relieve the poor taxpayers of the District who owned small parcels of land (Nelson, 11948, 11954; Townsend, 11956; Gronna, 11951).

Finally Senator Gallinger induced the Senate to add to the amendment the proviso requiring another joint committee of the two houses of Congress to make—

> "a careful and exhaustive study of the tax laws of "the District including license taxes with a view of "recommending such changes in the laws as the "joint committee may deem fair and equitable, report "to be made to the Congress during the next session."

With this added proviso Senator Sterling's amendment passed the Senate. In the conference committee to which the bill then went there was added the further proviso exempting from the tax savings deposits not in excess of $500. Thus amended the bill became a law. And this concludes the parliamentary history of the act of 1916.

The record of the proceedings in Congress of the act of 1917 is noteworthy only for its brevity. The District appropriation bill of that year again came from the House and from the appropriation committee of the Senate without any provision relating to taxation. When the committee amendments had been disposed of Senator Sterling stated that he wished to offer an amendment. The Senator in

charge of the bill said he had no objection. The Vice-President remarked that, without objection, the amendment would be considered adopted. There was no objection. The conference committee accepted the amendment, and it became the act of 1917. It did not emanate from any committee, the proposer of the amendment made no statement in regard to it, and there was no debate about it. The joint committee provided for by the act of 1916 made no report. It made no "careful and exhaustive study of the tax laws of the District." That provision of the act of 1916 was ignored altogether. And the act of 1917, which was passed as a substitute for the act of 1916, made no provision for any investigation.

So, the small landowner of the District was left to pay his land tax as before; the tax on his tangible personalty and his license tax were continued, and there was added the tax on his intangible property. And since this suit was brought the tax on his land has been increased from 1.50 per cent on a two-thirds valuation to 1.95 per cent.

Evidently there is nothing in these proceedings to indicate why Congress, in attempting to tax a few rich men believed to have come to Washington to live in order to escape taxation, enacted a law which requires every person, firm or corporation who resides in the District and every non-resident person or corporation who engages in business here to pay a tax on his or its intangible property. Among such non-resident corporations are five great railway systems, all the principal insurance companies of the United States and Great Britain, the Standard Oil Company, and hundreds of other large corporations.

So this act, aimed ostensibly at a few rich "tax dodgers," hits every individual taxpayer in Washington who owns a single share of stock or a single bond or promissory note. Every ten dollars he has in bank subject to check, every ten dollars he has, even in his pocket, he must include in his return and pay on it a tax of three cents. There is no

minimum. The act of 1902 exempts one thousand dollars in value of tangible property when it consists of "household and other belongings" not held for sale, but no exemption in any amount whatever is granted him who owns intangible property, except savings deposits up to $500. Some 27,000 taxpayers of the District are paying this tax. Their average tax is in the neighborhood of thirty dollars. Hence this act, by its plain terms in this regard, reaches far beyond and far below what its propounders intended to accomplish by it.

The proceedings in Congress throw no light whatever upon the intention of Congress in relation to any of the subjects discussed hereinabove under paragraph I of this brief. None of them was mentioned, even in the debate on the act of 1916.

As to the exemption of shares of stock in corporations which receive "no special franchise or privilege," no one in Congress referred to it; no one explained why the puzzling language of the act of 1902 exempting from the tax on corporate stock *newspapers, real estate and mercantile* companies, which by reason of incorporation receive no special franchise or privilege," was made as to a tax on intangible property more puzzling still by leaving out the words we have italicized.

If the court finds it difficult or impossible to give intelligent construction to all these ambiguities, what shall be said of the plight of the taxpayer who, with the statute before him, sits down to fill out his schedule. It is a serious business for him; for not only is he threatened with a penalty of a $500 fine or six months' imprisonment by the special provisions of the taxing law, but there hangs over him also the punishment for perjury contained in section 858 of the District Code of which he and all other taxpayers are reminded by the printed form furnished him by the authorities (Rec., 3) which is headed:

"Perjury in this statement is punishable by im-
"prisonment in the penitentiary for not less than
"two nor more than ten years."

V.

The classification of taxpayers and non-taxpayers in the act of 1917 is so unjust and unreasonable that, as to the taxpayers, it deprives them of their property without due process of law, rendering the whole act void.

The act of 1916 contained but two classes of exemptions—one of savings deposits not in excess of $500, and the other of shares of stock of corporations "within the District of Columbia," which were already taxed under the act of 1902. But, during the six months that elapsed between the passage of the acts of 1916 and 1917, a great variety of persons and associations had apparently satisfied the author of the acts that they should be exempted from the tax and the act of 1916 was amended accordingly.

This court has frequently held that, unless the classification by the States of the subjects of taxation is clearly without any reasonable foundation in the way of distinction between the classes taxed and those exempted, the courts may not interfere. But where it is plain that no such reasonable difference exists between the taxed class and the untaxed, the exemption is void.

Royster Guano Co. *vs.* Virginia, — U. S., —.
McFarland *vs.* American Sugar Co., 241 U. S., 79.

And in such a case, to enforce the act without the exemption would be contrary to the express intention of the legislature.

We submit that the act of 1917 teems with exemptions which are illegal under this rule, and that for this reason also the act is altogether void.

1. *Shares of stock in corporations "within the District of Columbia" and which corporations are taxed under the act of* 1902 *are exempted from tax by the act of* 1917, *while shares of stock in other corporations must be listed.*

In passing, it is to be remarked that here is another ambiguity which it is difficult to explain. What corporations are "within the District of Columbia"? Some are created by District laws and carry on all their activities here. Some are created by District laws, but carry on only a small part of their business in the District. Some organized under laws of one of the States are engaged in business wholly in the District. Other corporations of the States have only unimportant agencies here. Who can tell which of these several classes of corporations were intended to be exempted? They are all taxed on their tangible property or their earnings or their capital stock under the act of 1902, but how is it to be determined which of them are "within" the District? But, laying aside this difficulty, what reason is there why the shares of stock of corporations within the District, whatever that means, shall escape from the tax on intangibles, while the shares of stock of those without the District are taxable?

We assume that the court will take judicial notice of the fact that a tax on the gross earnings or the net earnings or the capital stock of corporations is practically universal in this country as well as elsewhere. Why should the shares of stock of these local companies be exempted while all the others are taxed? The decision of this court in the recent case of Royster Guano Company *vs.* Virginia, __ U. S., __ is directly in point. In that case a tax on Virginia corporations carrying on business in that State was held void because Virginia corporations not engaged in business in the State were excepted from the operation of the statute.

2. *Notes "discounted or negotiated by any bank or banking institution, savings institution, or trust company" need*

not be listed, while all other notes are taxed. This, it must be supposed, refers to promissory notes.

What possible reason is there why one who purchases a note from one of the institutions named should not have to pay the tax on it, while the holders of all other notes must put them on their schedules? It may be suggested, because the banks, savings institutions, and trust companies are taxed under the act of 1902. But what difference does that make to the individual who owns the note? And why should notes that have come through a financial institution which is taxed under the act of 1902 be tax-free, while notes that have been discounted or negotiated by other institutions which are similarly taxed in other jurisdictions are burdened with the tax?

The act of 1902 taxes "general brokers" and defines a general broker as one who, among other things, purchases, sells, or negotiates promissory notes and other securities. It taxes also "note brokers" by that designation. There is absolutely no reason why a note purchased from or negotiated by either a "general broker" or a "note broker" should be taxed, while one purchased from or negotiated by a bank or a trust company should be exempted.

And it is to be observed that this note exemption is not confined to notes discounted or negotiated in the District of Columbia. It applies to notes discounted or negotiated by *any* bank, etc. Therefore, it is of no consequence that banks, etc., in this District are taxed on their earnings.

Nor can this exemption be construed to refer to the payment of the tax by banks, etc., doing business in the District, since such institutions are exempted from the intangible tax in the last proviso to the act of 1917.

3. *Labor unions are exempted.* Organizations of employers, or of farmers, citizens' associations, all the numerous commercial organizations that have their main offices or special agencies in Washington, must pay the tax. Even

library, benevolent, charitable, and scientific institutions must pay. The act of 1902 exempted these four last-mentioned classes from the payment of the tax on tangible property, but none of them is mentioned in the exempting clauses of the act of 1917. It is submitted that the exemption of labor unions, while all the other associations we have enumerated are taxed, cannot stand.

4. *Life and fire insurance companies both escape taxation by this act if they have "no capital stock"; those that have capital stock must pay.* There is a difference here, of course, but it is submitted that there is none which justifies taxing one class and letting the other go untaxed.

5. *By the last proviso of the act, it is declared that corporations, limited partnerships, and joint-stock associations "within said District" which are "liable to tax under the laws of said District on earnings or capital stock" shall not be required to pay any further tax on their "mortgages, bonds, and other securities" held in their own right.*

As to corporations, this clause simply gives to those "within the District" the same exemption which, by the first exempting clause of the act is given to those who hold shares of stock in such corporations, and the same objections apply. Corporations of the States or of foreign countries engaged in business in the District are not taxed "under the laws of said District on earnings or capital stock." Therefore, they must pay whatever may be their burden of taxation in their respective jurisdictions.

So, limited partnerships and joint-stock companies of other jurisdictions carrying on any part of their business in the District must pay this tax, no matter what they are required to pay at home.

And why should District limited partnerships escape and District ordinary partnerships pay? And what sanctity surrounds a joint-stock association as against other associations?

It is apparent that the crudities of this legislation—the natural result of the hasty manner in which it was imposed as a rider on a District appropriation bill—are so great that it cannot be made operative without reconstructing it altogether.

VI.

The act of 1917 is altogether void, because by the provisions of the statutes governing the fiscal relations between the Government of the United States and the taxpayers of the District of Columbia the money collected from the taxpayers under the act of 1917 goes into the Treasury of the United States to be used for the general purposes of the Government. This is beyond the power of Congress.

The District appropriation bill, to which the act of 1917 was appended, made appropriations for the payment of the expenses of the District for the fiscal year ending June 30, 1918. The official reports of the Commissioners of the District of Columbia for the fiscal years ending June 30, 1918, and June 30, 1919, disclose the following facts:

The surplus revenues of the District of Columbia in the Treasury of the United States on June 30, 1918, over and above all charges arising under appropriations for that fiscal year and unexpended balances of appropriations for previous fiscal years, was $3,280,685.46. To this sum was added the further amount of $783,236.72, being the surplus for the fiscal year ending June 30, 1919, over and above all appropriation charges against District revenues for that year. Therefore, the total surplus to the credit of the District in the Treasury on July 1, 1919, was $4,063,922.18.

The total amount collected as tax on intangible property under the act of 1917 for the fiscal year ending June 30, 1918, was $823,146.45. For the fiscal year 1919, it was $822,292.70.

It will be seen that nearly all the money collected from the taxpayers of the District on their intangible property has gone into the District "surplus" in the Treasury.

No statute or regulation pursuant to statute limits in any way the power of Congress as to this surplus. It has become a part of the general fund, and Congress uses it accordingly.

This seems to be a startling proposition, but it is not a new one. Witness the following extracts from the debate in the Senate on the District appropriation bill on July 28, 1916—five days before the act of 1916 first taxing intangibles in the District was added to the District appropriation bill in the Senate. The pages refer to 53d Congressional Record, part 12:

> Mr. WORKS: The money which has already been contributed by the District of Columbia and not expended "belongs to the Government without any question." * * * There is no way by which the District can make any demand upon the Government for the repayment of the money they have paid under legal taxation. (11736.)
>
> Mr. BRANDEGEE inquired whether the General Government could take moneys collected from the District and appropriate them to other than District purposes. Thereupon this colloquy followed:
>
> Mr. STERLING: I should like to ask the Senator (Works) a question. Suppose under the present system—the half-and-half system—the District of Columbia should raise by taxation more than one-half, or its share of the expenses of the District, could Congress without any reference to the District of Columbia appropriate the money——
>
> Mr. WORKS: Undoubtedly.
>
> Mr. STERLING: To whatever uses it pleased?
>
> Mr. WORKS: Oh, no; not to any uses.
>
> Mr. STERLING: Outside of the expenses of the District?
>
> Mr. WORKS: I think there may be some trust character imposed by which the Government would be under obligation to apply it to the expense of carrying

on the District, but that the Government could keep it all I have no doubt whatever.

Mr. STERLING: If the Government did not apply it to the expenses of the District of Columbia, the District would have a right of action, would it not?

Mr. WORKS: I do not know whether it would or not. I think it quite doubtful under the law. It is a very peculiar law, a very peculiar condition of things.

Mr. STERLING: If the District can sue and be sued, it would seem that that might follow.

Mr. WORKS: It might sue and not maintain the action.

Mr. BRANDEGEE: A sovereign State cannot sue the General Government.

Mr. STERLING: That is true. (11737.)

Mr. CHILTON: Is the money collected from the District of Columbia legally District money? Not at all. It is all paid into the Treasury of the United States; it is the money of the United States, and it goes into the Treasury as does any other money. (11744.)

Mr. CHAMBERLAIN: Under this bill (repealing the half-and-half provision) as it stood when it reached the Senate the citizens of Washington would be deprived of the last vestige of participating and governing themselves which remains to them under the operations of the organic act. It virtually fixes the tax rate and governs the assessment and thereby mulcts the District in a certain sum of tax money and then sweeps that money into the Treasury of the United States to be classed as Federal funds, and to be expended with just so much of additional revenue as one Congress after another may see fit to appropriate. It is the last word in taxation without representation. * * *

Every dollar that can be wrung from him (the District taxpayer) by an increased rate or increased assessment, or both, or by the imposition of new and strange forms of taxation, will have the effect of reducing the amount of money paid by the United States and the Federal contribution. It puts a

premium upon increasing the District tax revenues. (11761.)

Mr. KENYON: I wish to ask the Senator where the situation arises that the amount from taxation in the District is more than one-half * * * what is done with that excess?

Mr. WORKS: It simply remains in the Treasury of the United States Government to be dealt with as the Government may choose. * * *

If the taxpayers have paid in more than one-half of the amount, then the Government appropriates to its use the balance of the money that has been collected in that way, which is a distinct violation of the statute and an injustice to the taxpayers of the District. (11914.)

Mr. WORKS: Let me read from the statement made by Mr. Brownlow, one of the Commissioners of the District, before the Joint Committee on Fiscal Relations, who dealt directly with the question and who spoke from knowledge and experience. * * *

"Every cent collected from the taxpayers of the District of Columbia goes into the Treasury to the credit of the United States; there is no account of the District of Columbia in the Treasury Department; and Congress is at liberty to do with the moneys collected from the taxpayers of the District anything it may do with the money collected from the custom houses or the offices of the internal revenue collectors anywhere in the Republic."

In making this statement, Mr. Brownlow had in mind the following correspondence.

In February, 1908, the Commissioners of the District, in writing, requested the Secretary of the Treasury to be caused to be opened on the books of the Treasury Department with the District of Columbia a separate trust fund account, to be denominated the "General Revenue Fund, District of Columbia."

As a ground for this request the Commissioners said that the District, as a municipal corporation, is entitled to all

the guaranties of the Constitution respecting life, liberty and property, and such guaranties are equally for the benefit of its citizens as for those of the several States.

The Secretary referred this communication to the Comptroller of the Treasury for his "review and opinion." In his reply, dated April 3, 1908, the Comptroller reviewed at great length the legislation of Congress governing the fiscal relations between the United States and the District of Columbia, and concluded by saying:

> "The United States has absolute control and power of disposition of all the revenues of the District of Columbia, and the acts of Congress cited and quoted from shows that it is exercising such power of disposition and control. All that the various acts indicate is that the relation of debtor and creditor shall be created between the United States and the municipal corporation of the District of Columbia in the disposition of such revenues. It does not assume the attitude of trustee for said corporation as to such revenues. The account should not therefore be kept on the books of the Treasury as a trust-fund account. Neither are the revenues received from taxation or otherwise in the District of Columbia required to be kept on the books of the Treasury as a special fund. The act of July 9, 1886, *supra*, provides that all revenues as received shall be credited to 'said District as such on the books of the Treasury.'
>
> "This indicates that the account with the District of Columbia is to be kept as a personal account between the United States and the District of Columbia, and that all revenues received shall be treated as payments on account and credited to the District as such." (Decisions of the Comptroller of the Treasury, Vol. 14, page 646.)

The act of Congress approved June 5, 1920, making appropriations for the current fiscal year, contains the following opening provisions:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That 40 per centum of the following sums, respectively, is appropriated out of any money in the Treasury not otherwise appropriated, and 60 per centum out of the revenues of the District of Columbia, in full for the following expenses of the government of the District of Columbia for the fiscal year ending June 30, 1921 only, namely:

"Appropriations for the fiscal year ending June 30, 1921, heretofore or hereafter made in other acts and chargeable in any proportion against the revenues of the District of Columbia, shall be paid in the proportions of 40 per centum from the Treasury of the United States and 60 per centum from the revenues of the District of Columbia.

"If the estimated net revenues of the District of Columbia for the fiscal year ending June 30, 1921, are not sufficient to meet the proportion of the appropriations for that fiscal year charged against such revenues by this and all other acts, or which may be estimated to be charged against such revenues by acts that may be approved during such fiscal year, the Commissioners of the District of Columbia shall increase the rates of taxation on real estate and tangible personal property sufficiently to make up the difference: *Provided, however*, That such rates of taxation shall in no event be less than $1\frac{1}{2}$ per centum nor more than 2 per centum."

Act of June 5, 1920.

In pursuance of the authority conferred upon them by the foregoing act the Commissioners on the 26th day of June, 1920, made and published the following order:

"That pursuant to the provisions of the act of Congress approved June 5, 1920, entitled 'An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1921, and for other purposes,' the rate of taxation on taxable real estate and tangible personal property for the fiscal year ending

June 30, 1921, is hereby fixed at $1.95 on each $100.00, respectively, of the assessed valuation thereof."

It will be seen that, by these proceedings, the so-called surplus fund of the District in the Treasury of the United States is ignored. The additional levy of 45 per cent on the real property and tangible personal property of the District will produce a sum far less than the amount of that surplus. Thus Congress exercises the power claimed for it by taking over about four million dollars taken from the people of the District by taxation, leaving that sum in the Federal Treasury to be used to pay the expenses of the General Government.

This situation requires an examination of the whole question of the powers of Congress relating to taxation in this District, and necessarily involves a consideration of all the statutes in force imposing taxes on property in the District. That subject we may ask leave to deal with in a separate brief.

Respectfully submitted,

VERNON E. WEST,
A. S. WORTHINGTON,
Attorneys for Petitioners.

APPENDIX.

SEC. 6. That in order to provide revenues to meet the appropriations made by this act and appropriations to be hereafter made to provide for the expenses of the Government of the District of Columbia, it is further enacted: That the act of Congress, entitled "An act to provide an immediate revision and equalization of real estate values in the District of Columbia; also to provide an assessment of real estate in said District in the year eighteen hundred and ninety-six and every third year thereafter, and for other purposes," approved August fourteenth, eighteen hundred and ninety-four, is hereby amended to take effect from and after July first, nineteen hundred and two, as follows: Section two, line two, strike out the word "three," and insert in lieu thereof the word "five;" section two, line five, after the words "assistant assessors, who," strike out the words "shall hold office for a term of four years, unless sooner removed by said Commissioners for cause satisfactory to them and;" section two, line nine, after the words "per annum," insert the following: "The assessor of the District of Columbia and the members of said permanent board of assistant assessors shall not be removed except for inefficiency, neglect of duty, or malfeasance in office."

That the assessor of the District of Columbia shall designate three of the members of said permanent board of assistant assessors for the assessment of real estate who shall constitute and compose the excise board, under the provisions of the act of the Congress, approved August fourteenth, eighteen hundred and ninety-four, aforesaid; and the two other members of said permanent board of assistant assessors shall be designated by said assessor to compose a board of personal tax appraisers, to assess personal property in accordance with the provisions of this section; and all five members of said permanent board of assistant assessors, together with the

assessor as chairman, shall constitute the board of equalization and review of real estate assessments and also the board of personal tax appeals: *Provided*, That the assessor of the District of Columbia shall act as chairman, *ex officio*, of the several boards aforesaid.

That the two members of the permanent board of assistant assessors designated, as aforesaid, by the assessor, to assess personal property, shall, under the direction and supervision of the said assessor, assess personal property in the District of Columbia as follows:

That hereafter the assessor of the District of Columbia, or his successor in office, shall annually cause to be prepared a printed blank schedule of all tangible personal property and all general merchandise or stock in trade, owned or held in trust or otherwise, subject to taxation under the provisions of this section, and of the classes of corporations and companies to be assessed, together with the rate of tax prescribed, to which shall be appended an affidavit in blank, setting forth that the foregoing presents a full and true statement of all such personal property, taxable capital, or other basis of assessment, or either, as the case may be. When said schedule is ready for delivery, notice thereof shall be given by the assessor by advertisement for three successive secular days in one or more of the daily newspapers published in said District, and a copy of said schedule shall be delivered to any citizen applying therefor at the office of the assessor. Every person, association, corporation, firm, or company in said District liable to taxation hereunder, and every association, company, executor, administrator, guardian, or trustee holding personal property in trust liable to taxation hereunder, shall, within thirty days after the last publication of said advertisement, as aforesaid, fill out the proper blanks in said schedule with a full and true statement, as in this section hereinbefore required, and make and sign an affidavit to the truth thereof, as aforesaid, before the assessor or one of the other members of the said board of personal-tax appraisers,

and the members of the said board are hereby authorized to administer such and all oaths in connection with their duties as assessor and appraisers without charge, or before any person authorized by law to administer oaths; and the address in the District of Columbia of the person, corporation, or company making affidavit shall in each case be given below his, its, or their signature, and thereupon said board of personal-tax appraisers, or any one of the members thereof, shall assess said property at its fair cash value, and enter the same in the columns upon said blanks provided for that purpose, and the amount thus ascertained shall be entered upon the books for taxation for the fiscal year beginning July first, nineteen hundred and two, and each fiscal year thereafter. *Provided*, That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall fail to make and deliver to the assessor or one of the said appraisers, within thirty days after the date of the last advertisement of the notice hereinbefore required, the schedule of his or its said personal property, owned, held in trust, or otherwise, as provided for in this section, then the said board of personal-tax appraisers hereinbefore provided for shall without delay, from the best information they can procure, make an assessment against such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, to which they shall add twenty per centum thereof: *Provided further*, That if the said board of personal-tax appraisers be not satisfied as to the correctness of the return of personal property made by any person, firm, association, corporation, company, administrator, executor, guardian, or trustee, said board may reject said return, and said board, or any one of the members thereof, may, from the best information he or they can procure, or by making such an examination of the personal property as may be practicable, assess the same in such amount as may to him or them seem just; and notice of the rejection of the sworn return shall be given to the party interested by leaving the

same at the address given in said return, and in all such cases there shall be a right of appeal from the action taken by said appraisers to the Board of personal-tax appeals, hereinafter provided for, or to their successors in office, within fifteen days after delivery of said notice of rejection as aforesaid: *And provided further*, That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall make a false affidavit touching the matters herein provided for, he or they shall be deemed guilty of perjury, and upon conviction thereof shall be subject to the penalties for that offense now provided by section eight hundred and fifty-eight of the Code of the District of Columbia.

Par. 2. On all tangible personal property, assessed at a fair cash value (over and above the exemptions provided in this section), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there shall be paid to the collector of taxes of the District of Columbia one and one-half per centum on the assessed value thereof.

Par. 3. Dealers in general merchandise of every description shall pay to the collector of taxes of the District of Columbia one and one-half per centum on the average stock in trade for the preceding year.

After the passage of this act it shall be unlawful for any person or persons entering the District of Columbia subsequent to June thirtieth in each year, and establishing a place of business for the sale of goods, wares, or merchandise, either at private sale or at auction, to conduct such business until a sworn statement of the value of said stock has been filed with the assessor of the District of Columbia, who shall thereupon render a bill for the unexpired portion of the fiscal year at the same rate as other personal taxes are levied. The assessor is hereby authorized to reassess said stock whenever in his judgment it has been undervalued. The goods, wares, and merchandise of any person or persons, who shall fail to pay the tax required by this paragraph within three days

after beginning business, shall be subject to distraint, and it shall be the duty of the assessor to place bills therefor in the hands of the collector of taxes, who shall seize sufficient of the goods of the delinquent to satisfy said tax: *Provided*, That said owner shall have the right of redemption within thirty days on payment of said tax, to which shall be added a penalty of one per centum, together with the costs of seizure. The collector shall sell such goods as are not redeemed, at public auction, after advertisement for the three days preceding said sale.

Par. 4. Hotel companies and the proprietors of hotels shall pay to the collector of taxes of the District of Columbia one and one-half per centum on the assessed value of their furniture.

Par. 5. Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks, and trust companies, in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the first day of August each year as to the amount of its or their gross earnings for the preceding year ending the thirtieth day of June, and shall pay to the collector of taxes of the District of Columbia per annum on such gross earnings as follows: Each national bank and all other incorporated banks, and trust companies, respectively, six per centum; each gas company, five per centum; each electric lighting, and telephone company, four per centum. And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric lighting and telephone company in the District of Columbia shall be taxed as other real estate in said District: *Provided*, That street railroad companies shall continue to pay the four per centum per annum on their gross receipts and other taxes as provided by existing law, and insurance companies shall continue to pay the one and one-

half per centum on premium receipts, as provided by section six hundred and fifty of the Code of the District of Columbia. That so much of the act approved October first, eighteen hundred and ninety, entitled "An act to provide for the incorporation of trust, loan, mortgage, and certain other corporations within the District of Columbia" as is inconsistent with the provisions of this section is hereby repealed.

Par. 6. All companies who guarantee the fidelity of any individual or individuals, such as bonding companies, shall pay to the collector of taxes of the District of Columbia one and one-half per centum of their gross receipts in the District of Columbia.

Par. 7. Savings banks having no capital stock and paying interest to their depositors shall, through their president or cashier, make affidavit to the board of personal-tax appraisers on or before the first day of August in each year as to the amount of their surplus and undivided profits, and shall pay to the collector of taxes of the District of Columbia a sum equal to one and one-half per centum on the amount of their surplus and undivided profits on the thirtieth day of June preceding.

Par. 8. The capital stock of all corporations, other than those herein provided for, organized in the District of Columbia or under the laws of any of the States or Territories of the United States chiefly for the purpose of and transacting business within the District of Columbia, except those exempted by the laws relating to the District of Columbia, shall be appraised in bulk at its fair cash value by the board of personal-tax appraisers, and the corporation issuing the same shall be liable for the tax thereon according to such value, and shall pay to the collector of taxes of the District of Columbia a sum equal to one and one-half per centum on the assessed valuation thereof; but from the assessed valuation of such capital stock shall first be deducted the value of any and all real estate owned by such corporation in said District, which real estate shall be separately taxed against said corporation:

Provided, That nothing in this act contained shall be construed to include newspaper, real estate, and mercantile companies, which by reason of incorporation receive no special franchise or privilege; but all such corporations shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed.

Par. 9. Building associations shall pay to the collector of taxes of the District of Columbia four per centum per annum on their gross earnings for the preceding year ending June thirtieth.

Par. 10. The following personal property shall be exempt from taxation.

First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain.

Second. Libraries, schoolbooks, wearing apparel, articles of personal adornment, all family portraits, and heirlooms.

Third. Household and other belongings, not held for sale, to the value of one thousand dollars, owned by the occupant of any dwelling house or other place of abode, in which such household and other belongings may be located.

Par. 11. That said board of assistant assessors hereinbefore provided for, with the assessor of the District of Columbia as chairman, shall compose a board of personal-tax appeals, and as such board of personal-tax appeals shall convene in a room to be provided therefor by the said assessor, on the fifteenth day of November in each year, and public notice of the time and place of such meeting shall be given by advertisement for two consecutive secular days in two daily newspapers published in the District of Columbia. It shall be the duty of the board of personal-tax appeals, between the date of convening and December fifteenth of each year, to hear all appeals made by any person or persons against the assessments made by the board of personal-tax appraisers and to impartially equalize the value of said personal property as a basis

for assessment. Any four members of the said board shall constitute a quorum for business, and in the absence of the assessor a temporary chairman shall be selected. They shall be empowered to diminish or increase such assessments as they may believe to have been returned at other than their true value to such amount as, in their opinion, may be the value thereof, and the action of said board in such cases shall be final. Said board of assistant assessors shall also perform such other official duties as may be required of them by the assessor of the District of Columbia: *Provided*, That in case the personal-tax appraisers shall fail to complete any of the duties in this section to be by them performed within the time provided therefor the taxation provided by this section shall not by reason thereof be invalid; but such appraisers shall proceed with all reasonable diligence to complete such duties, and their acts shall be valid as if performed within the time fixed therefor. If, at any time within any current year, property subject to taxation under the provisions of this section shall have been omitted from assessment, said board of personal-tax appraisers shall immediately proceed to assess the same for the then current year, giving notice in writing to the persons or corporations so assessed, who shall have a right of appeal within ten days from date of said notice.

Par. 12. That when the taxes on personal property due and payable in each year shall not be paid on or before the first day of June, then and in that event the collector of taxes of the District of Columbia, or his deputy, may distrain sufficient goods and chattels found within the District of Columbia and belonging to the person, firm, association, corporation, company, administrator, executor, guardian, or trustee charged with such tax to pay the taxes remaining due, under the provisions of this law, from such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, together with the penalty thereon and the costs that may accrue; and for want of such goods and chattels said collector of taxes may levy upon and sell at auction the estate

and interest of such person, firm, association, corporation, company, administrator, executor, guardian, or trustee in any parcel of land in said District; and in the case of the levy on any estate or interest in land the proceedings subsequent to sale thereof shall be the same as now provided by law in the case of sales for arrears of taxes against real estate; and in the case of distraint of personal property or the levy upon real estate as aforesaid the collector of taxes shall immediately proceed to advertise the same by public notice to be posted in the office of said collector and by advertisement, three times within one week, in one or more of the daily newspapers published in said District, stating the time when and the place where such property shall be sold, the last publication to be at least six days before the date of sale, and if the said taxes and penalty thereon, and the costs and expenses which shall have accrued thereon, shall not be paid before the day fixed for such sale, which shall not be less than ten days after said levy or taking of said property, the collector shall proceed to sell at public auction in his office, to the highest bidder, such property, or so much thereof as may be needed to pay such taxes, penalty, and accrued costs and expenses of such distraint and sale. Said collector shall report in detail, in writing, every distraint and sale of personal property to the Commissioners of the District of Columbia or their successors in office, and his accounts in respect to every such distraint or sale shall forthwith be submitted to the auditor of the District of Columbia and be audited by him. Any surplus resulting from such sale over and above such taxes, costs, and expenses shall be paid into the Treasury, and upon being claimed by the owner or owners of the goods and chattels aforesaid shall be paid to him or them upon the certificate of the collector of taxes stating in full the amount of such excess.

Par. 13. That all taxes levied under the foregoing provisions of this section shall be due, payable, and collectible at the same time and times as the general tax on real estate

in said District, and shall be subject to the same penalties for non-payment thereof until distraint or sale as hereinbefore provided.

Par. 14. That private banks or bankers not incorporated shall pay a tax of five hundred dollars per annum. Every person, firm, company, or association not incorporated having a place of business where credits are opened by the deposit or collection of moneys or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a private bank or banker.

Par. 15. General brokers shall pay a tax of two hundred and fifty dollars per annum. Every person, firm, company, or association not incorporated (except insurance and real-estate brokers acting as such) that solicits business from the general public by advertisement or otherwise, and that purchases, sells, or negotiates for others securities, shares, stocks, bonds, exchange, bullion, coin, money, bank notes, or promissory notes, or that deals in futures on market quotations of prices or values on merchandise, shares, stocks, bonds, or other securities, or accepts margins on prices or values of said shares, stocks, bonds, merchandise, or securities, shall be deemed a general broker: *Provided*, That the Washington Stock Exchange, through its president or treasurer, shall pay to the collector of taxes of the District of Columbia a sum equal to five hundred dollars per annum in lieu of tax on the members thereof for business done on said exchange: *Provided further*, That any broker who is a member of a regularly organized stock exchange located outside of the District of Columbia and transacting a brokerage business therein, shall pay a sum equal to one hundred dollars per annum to the collector of taxes of the District of Columbia: *And be it further provided*, That if any person or firm shall have paid the tax in this section provided for banks and bankers, such person or firm shall not again be taxed as a broker or brokers.

Par. 16. Note brokers shall pay a tax of one hundred dollars per annum. Every person, firm, company, or association not incorporated (except private banks and bankers) that loans money on promissory notes without real estate or collateral security or advances money on personal property as security without possession of said personal property shall be deemed a note broker: *Provided*, That exceptions shall be made of co-operative associations whose business is restricted to the members of such association.

Par. 17. The taxes for said private banks and bankers, general brokers, and note brokers shall be paid to the collector of taxes of the District of Columbia, and shall date from the first day of July in each year and expire on the thirtieth day of June following. Said taxes shall date from the first day of the month in which the liability begins, and payment shall be made for a proportionate amount.

Par. 18. Any person or persons violating any of the provisions of this section shall be liable to a penalty of not exceeding five hundred dollars for each offense, said penalty to be imposed, upon conviction in the police court of the District of Columbia, as other fines and penalties are imposed, and said court is hereby invested with jurisdiction thereof; and in default of the payment of said penalty the person or persons so convicted shall be imprisoned, in the discretion of the court, not exceeding six months.

Par. 19. That the Commissioners of the District of Columbia be, and they are hereby, authorized and directed to appoint a clerk and assistant clerk to said board of personal-tax appraisers at annual salaries of one thousand four hundred and one thousand dollars each, and three inspectors at annual salaries of one thousand two hundred dollars each, all of whom shall perform such duties as may be assigned to them by the chairman of said board; and to pay the salaries of the two assistant assessors, the clerk and assistant clerk to said board of personal-tax appraisers, and the three inspectors

aforesaid for the fiscal year beginning July first, nineteen hundred and two, and six thousand dollars for books, stationery, printing, means of transportation, and other incidental expenses, including the hire of temporary clerks, not to exceed one thousand dollars, the sum of eighteen thousand dollars is hereby appropriated.

License Taxes.

SEC. 7. That no person shall engage in or carry on any business, trade, profession, or calling in the District of Columbia for which a license tax is imposed by the terms of this section without having first obtained a license so to do. Applications for licenses shall be made to the assessor of the District of Columbia, and no license shall be granted until payment for the same shall have been made. Every license shall specify by name the person, firm, or corporation to which it shall be issued, the business, trade, profession, or calling for which it is granted, and the location at which such business, trade, profession, or calling is to be carried on. Licenses granted under the terms of this section may be assigned or transferred on application upon the conditions applicable to granting the original licenses, and the assessor shall issue a certificate of such assignment or transfer upon the payment to the District of Columbia of a fee of fifty cents therefor. All licenses and transfers issued or granted shall be signed by the assessor of the District of Columbia and impressed with the seal of his office.

PAR. 2. That when more than one business, trade, profession, or calling for which a license is herein prescribed shall be carried on by the same person, the license tax shall be paid for each such business, trade, profession, or calling: *Provided*, That licenses issued under any of the provisions of this act shall be good only for the location designated thereon, and no license shall be issued for more than one place of business, profession, or calling, without the payment of a separate tax

for each: *Provided further*, That no license shall be granted under the provisions of this section, relating to hotels and theaters, until the inspector of buildings, and the chief officer of the fire department have certified in writing to the assessor that the applicant for license has complied with the laws enacted and the regulations made and promulgated for the protection of life and property.

Par. 3. That all licenses issued shall date from the first day of November in each year and expire on the thirty-first day of October following, except as hereinafter provided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above prescribed, and payment shall be made of the proportionate amount of the annual license tax: *Provided*, That in cases where the tax is less than five dollars per annum the license shall terminate one year from the first day of the month in which the license was issued.

Par. 4. That no person holding a license under the terms of this section shall willfully suffer or allow any other person chargeable with a separate license to operate under his license.

Par. 5. That all licenses granted under the terms of this section must be conspicuously posted on the premises of the licensee. Said licenses shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspections. Licensees having no located place of business shall exhibit their licenses when requested to do so by any of the officers above named.

Par. 6. That no person shall set up, operate, or conduct any business or device by or in which any person, animal, or living object shall act or be exposed as a target for any ball, projectile, missile, or thing thrown or projected, for or in consideration of profit or gain, directly or indirectly.

Par. 7. That apothecaries or druggists shall pay a license tax of six dollars per annum. Every person who sells patent

medicines, or manufactures, compounds, sells, or dispenses medicines by prescription or otherwise from a located place of business shall be regarded as an apothecary or druggist.

Par. 8. That auctioneers shall pay a license tax of one hundred dollars per annum. Hereafter the provisions of the act of Congress entitled "An act to prevent fraudulent transactions on the part of commission merchants," approved March twenty-first, eighteen hundred and ninety-two, shall be applicable to all license auctioneers, their agents, and employees.

Par. 9. That commission merchants shall pay a license tax of forty dollars per annum. Every person, firm, or corporation that acts as agent for others in negotiating sales or purchases of goods, wares, or merchandise, live stock, produce, and so forth, or negotiates freights for railroads, ships, or vessels, or for the shippers or consignees of freights carried by railroads, ships, or vessels, shall be regarded as a commission merchant.

Par. 10. That cattle dealers shall pay a license tax of fifteen dollars per annum: *Provided*, That one person only shall be entitled to do business under each license. Every person who makes a business of trading, buying, or selling horses, cattle, sheep, or hogs shall be regarded as a cattle dealer.

Par. 11. That proprietors or owners of hacks, coaches, omnibuses, carriages, wagons, and other passenger vehicles for hire shall pay license taxes as follows: Vehicles drawn by one animal, six dollars per annum; autovehicles, automobiles, electromobiles, or other horseless vehicles by whatever name called, and vehicles drawn by more than one animal, nine dollars per annum. Licenses issued under this section shall date from July first in each year. The driver of every licensed passenger vehicle, while transacting business as such driver, shall wear conspicuously upon his breast a badge numbered to correspond with the license of his

vehicle. The badge shall be furnished by the District of Columbia and a tax of fifty cents shall be charged therefor in addition to the amount of the vehicle license.

Par. 12. That proprietors or owners of livery stables shall pay license taxes as follows: For stables containing ten stalls or less, twenty-five dollars per annum, and two dollars per annum additional for each stall in addition to ten: *Provided,* That nothing in this paragraph shall be so construed as to exempt livery-stable keepers from paying additional license taxes for operating any description of vehicles occupying the public stands.

Par. 13. That proprietors or owners of establishments where autovehicles of any pattern, description, or motor power whatsoever are kept for hire or are kept or stored for others, for profit or gain, shall pay a license tax of twenty-five dollars per annum for ten vehicles or less and two dollars additional for each vehicle in addition to ten: *Provided,* That nothing in this paragraph shall be so construed as to exempt the owner of any vehicle using the public stands from paying the additional license tax provided in paragraph eleven of this section.

Par. 14. That persons, firms, or corporations operating vehicles for hire or for the transportation of passengers in the District of Columbia with sufficient regularity to enable the public to take passage therein at any point intermediate to the stable or stand of such vehicle, or operate such vehicle over a route sufficiently definite to enable the public to ascertain the streets and avenues on which such vehicle can be found en route, shall pay license taxes as follows: For each vehicle with a seating capacity not to exceed ten passengers, six dollars per annum; for each vehicle with a seating capacity exceeding ten passengers, twelve dollars per annum. No license shall be issued under the terms of this paragraph without the approval of the Commissioners of the District of Columbia.

Par. 15. That real estate brokers or agents shall pay a

license tax of fifty dollars per annum. Every person who sells, or offers for sale, as the agent for others, real estate, wherever located, including mining and quarry property, or who makes or negotiates loans thereon, or who rents houses, buildings, stores, or real estate, or who collects rents for others, shall be regarded as a real estate broker or agent: *Provided,* That the practice of a profession in connection with the real estate business shall not exempt any person from the requirements of this paragraph who would otherwise be liable hereunder.

Par. 16. That persons, firms, corporations, or associations transacting the business of the purchase or sale of securities, stocks, shares, or certificates, based upon an estimated value after a lapse of a certain period of time, or who undertake to guarantee the holder of said securities, stocks, shares, or cetificates certain sums of money based upon investments after the lapse of a certain time, or who promise to divide with the holders or investors of said securities, stocks, shares, or certificates, or with the heirs or assigns of such holders or investors, any profit which may accrue from their investments at maturity, shall pay a license tax of one hundred dollars per annum: *Provided,* That this paragraph shall not apply to any fire or life insurance company or building association allowed to transact business as such in the District of Columbia.

Par. 17. That railroad ticket brokers shall pay a license tax of twenty-five dollars per annum.

Par. 18. Proprietors of hotels shall pay annually one dollar for each room provided for the accommodation of guests: *Provided,* That no license shall be issued for less than thirty dollars per annum, dating from November first. Every place where food and lodging are provided for transient guests shall be regarded as a hotel.

Par. 19. That victualers, owners of restaurants, oyster houses, cookshops, ice-cream parlors, dairy lunches, or eat-

ing houses, by whatsoever name designated, where food, meals, or refreshments are served to transient customers, to be eaten on the premises where sold, shall pay a license tax of eighteen dollars per annum: *Provided,* That this paragraph shall not apply to the proprietors of hotels nor to private boarding houses where board and lodging are provided by the week or month.

Par. 20. That owners, lessees, or managers of theaters having a stage and movable scenery used for the purpose of acting, performing, or playing any play, farce, interlude, opera, or other theatrical or dramatic performance, or any scene, section, or portion of any play, farce, burlesque, or drama of any description, for gain, shall pay a license tax of one hundred dollars per annum: *Provided,* That licenses may be granted for theatrical performances for one week on the payment of twenty dollars, and for less than one week on the payment of ten dollars: *And provided further,* That the proprietors of buildings, other than theaters, where exhibitions, lectures, or entertainments of any description are conducted for gain shall pay a license tax of one hundred dollars per annum; or for lesser periods as follows: Three dollars per day, or ten dollars for the first week, and five dollars for each subsequent consecutive week: *And provided further,* That for entertainments, concerts, or performances of any kind given in church premises or private residences where the proceeds are intended for church or charitable purposes, and where no rental is charged, no license tax shall be required.

Par. 21. That every person who exhibits paintings, pictures, or works of art, or makes industrial mechanical, agricultural, food, or floral exhibitions, including cattle and poultry shows, freaks and museum attractions, side shows, and all other lawful exhibitions not otherwise provided for, shall pay a license tax of three dollars per day, or ten dollars for the first week and five dollars additional for each subse-

quent consecutive week, and for an annual license the tax shall be one hundred dollars.

Par. 22. That persons conducting concerts, entertainments, or balls to which an admission fee is charged, directly or indirectly, shall pay a license tax of three dollars for each day or night.

Par. 23. That proprietors or owners of any circus shall pay a license tax of two hundred dollars per day.

Par. 24. That owners or lessees of grounds used for horse racing, tournaments, athletic sports, baseball, football, polo, golf, and kindred games, or where feats of horsemanship are performed, to which admission fees are charged or which are used for profit or gain, directly or indirectly, shall pay a license tax of twenty dollars per week or five dollars per day.

Par. 25. That owners or lessees of grounds or premises used for picnics or lawn fêtes, or resorts where theatrical or musical attractions or other amusements are presented, to which admission fees are charged or which are used for profit or gain, directly or indirectly, and which are not taxed under any other paragraph of this section, shall pay a license tax of three dollars per day or ten dollars per week and five dollars additional for each subsequent consecutive week, or for an annual license a tax of one hundred dollars.

Par. 26. That owners or lessees of buildings used for skating rinks, fairs, carnivals, or amusements not otherwise provided for in this section shall pay a license tax of three dollars per day, or ten dollars for the first week and five dollars additional for each subsequent consecutive week, or for an annual license a tax of one hundred dollars.

Par. 27. That owners or lessees of shooting galleries, fencing schools, public gymnasiums, places where firearms of any description are used, or schools where the art of self-defense is taught shall pay a license tax of twelve dollars per annum: *Provided,* That no place of business or shooting gallery where firearms are to be used shall be licensed until the inspector of buildings for the District of Columbia shall

furnish a certificate that suitable precautions have been taken for the public safety by the erection of iron shields and such appliances as in his judgment may be necessary: *And provided further,* That before such license shall be issued the proprietor shall furnish to the assessor of the District of Columbia the written consent of a majority of the occupants and residents on the same side of the square or block in which the proposed gallery is to be located and also on the confronting side of the square fronting opposite to the same. The major and superintendent of police is hereby authorized to prescribe the caliber of firearms and kind of cartridges to be used in such licensed places.

Par. 28. That proprietors or owners of apparatus or machines known as merry-go-rounds, flying horses, or similar devices for amusement shall pay a license tax of twelve dollars for the first week and ten dollars for each subsequent consecutive week, or three dollars per diem: *Provided,* That license therefor may be refused in the discretion of the Commissioners of the District of Columbia.

Par. 29. That proprietors or owners of slot or automatic machines, so called (telephones excepted), by which objects, pictures, or figures are presented to public view or musical or vocal exhibitions are automatically given on the deposit of money or metal, or where a pecuniary consideration is received for the use of said apparatus or machines, shall pay a license tax of two dollars per annum for each machine or apparatus: *Provided,* That on the payment of a license tax of fifty dollars per annum the number of machines at any one location shall not be limited: *And provided further,* That no license shall be issued for less than two dollars.

Par. 30. That owners or managers of Turkish, Russian, or medicated baths shall pay a license tax of twenty-five dollars per annum.

Par. 31. That owners or managers of massage establishments shall pay a license tax of twenty-five dollars per annum: *Provided,* That no license shall be issued under this

paragraph without the approval of the major and superintendent of police.

Par. 32. That mediums, clairvoyants, soothsayers, fortune tellers, or palmists, by whatsoever name called, conducting business for profit or gain, directly or indirectly, when permitted to practice their calling in the District of Columbia, shall pay a license tax of twenty-five dollars per annum: *Provided*, That no license shall be issued without the approval of the major and superintendent of police.

Par. 33. That hucksters or produce dealers at large shall pay a license tax of twelve dollars per annum for each vehicle used in the conduct of their business. Licenses issued under this paragraph shall date from April first in each year. Every person who vends or sells fresh, smoked, or salt fish, meats, oysters, clams, shellfish, poultry, game, butter, eggs, vegetables, fruits, berries, candies, nuts, groceries, or produce of any kind from a vehicle of any description shall be regarded as a huckster. Every driver shall be furnished with a badge corresponding to the number of his license, which shall be worn conspicuously while transacting business, and a similar number on metal shall also be furnished him which shall be attached to his vehicle: *Provided*, That no license shall be required of any person bringing to and selling at the several markets produce of his own raising: *And provided further*, That raisers of produce shall not be exempt from the license tax imposed unless they sell such produce at the several markets or by the wholesale in cart, wagon, or carload lots.

Par. 34. That fuel hucksters shall pay a license tax of five dollars per annum for each vehicle used in the conduct of their business. Every person who vends or sells fuel, oils, gasoline, wood, coal, and so forth, from house to house from vehicles of any description shall be regarded as a fuel huckster.

Par. 35. That peddlers shall pay a license tax of twenty-five dollars per annum. Licenses issued under this para-

graph shall date from April first of each year, and one person only shall be entitled to operate thereunder. Every person who vends or sells from house to house miscellaneous articles of merchandise or personal property of any description, either as a foot peddler or selling from a vehicle, shall be regarded as a peddler.

Par. 36. That brewers or manufacturers of fermented liquors of any description for sale, and brewers' agents, shall pay a license tax of two hundred and fifty dollars per annum: *Provided*, That agent's license under this paragraph shall only authorize the licensee to conduct his business with the goods of the brewer represented by such agent: *And provided further*, That a licensed brewer's solicitor, whose business is confined to soliciting orders for his principal, shall not be liable for the license tax provided for in this paragraph.

Par. 37. That distillers or rectifiers shall pay a license tax of two hundred and fifty dollars per annum.

Par. 38. Section eight of "An act regulating the sale of intoxicating liquors in the District of Columbia," approved March third, eighteen hundred and ninety-three, is hereby amended by striking out therefrom the words "The fee for a wholesale license shall be two hundred and fifty dollars per annum, and for a barroom license four hundred dollars per annum," and inserting in lieu thereof the words: The fee for a wholesale license shall be three hundred dollars per annum, and for a barroom license eight hundred dollars per annum.

Par. 39. That billposters and persons engaged in the business of painting or placing signs or advertisements on land, buildings, billboards, fences, or other structures in the District of Columbia visible from a street or other public space shall pay an annual tax of twenty dollars before engaging in said business. No person shall place, exhibit, maintain, or continue any advertisement or poster except upon such land, houses, buildings, billboards, fences, or

other structures as the Commissioners of the District of Columbia may, in their discretion, authorize in writing for that purpose. The said written authority shall only be granted in resident streets upon application made in writing and signed by a majority of the residents on the side of the square in which said display is to be made and also the side of the confronting square: *Provided*, That nothing in this paragraph shall apply to persons who advertise a business, exhibition, or entertainment on the premises where the same is conducted, nor to signs relating to the sale, rent, or lease of lands when the sign or advertisement is on the land referred to in the said sign or advertisement. Any person violating any of the provisions of this paragraph shall, upon conviction thereof in the police court of the District of Columbia, be punished by a fine of not more than two hundred dollars, and after conviction of any such violation the offender shall be liable to a further fine of not more than ten dollars for each and every day thereafter that said violation of law shall continue.

Par. 40. That owners or lessees of any buildings, structures, or tanks used for the storage of any description of inflammable oils in quantities exceeding five barrels shall pay a license tax of ten dollars per annum and shall have the approval of the fire marshal before license is granted.

Par. 41. That owners or lessees of laundries operated otherwise than by hand power shall pay a license tax of twenty dollars per annum. Owners or lessees of laundries operated by hand labor shall pay a license tax of ten dollars per annum.

Par. 42. That proprietors or owners of intelligence offices, information bureaus, registries, or employment offices, by whatsoever name called, shall pay a license tax of ten dollars per annum.

Par. 43. That dealers in second-hand personal property shall pay a license tax of forty dollars per annum. Every person who buys, sells, trades, exchanges, or deals in old

gold, silver, jewelry, precious stones, iron, metals of all kinds, cordage, tentage, hides, pelts, glass, rags, paper, ordnance, ship chandler's stores, junk, furniture, clothing, or second-hand personal property of any description shall be regarded as a second-hand dealer.

Par. 44. Pawnbrokers shall continue to pay to the collector of taxes of the District of Columbia one hundred dollars for license, and be subject to the regulations prescribed by existing law.

Par. 45. Keepers of billiard, bagatelle, jenny lind, and pool tables, shuffleboards, or any table upon which legitimate games are played within the District of Columbia for public use, or for profit or gain, shall continue to pay to the collector of taxes of the District of Columbia twelve dollars per annum license for each table and be subject to the provisions of the act of Congress approved February twenty-five, eighteen hundred and ninety-seven, entitled "An act to license billiard and pool tables in the District of Columbia, and for other purposes."

Par. 46. An annual license tax is hereby imposed upon the following classes of business, trades, and professions, namely: Boarding houses (public), one dollar per room; claim agents, twenty-five dollars; building and other contractors, twenty-five dollars; carriage or wagon making establishments, twenty-five dollars; cigar dealers, twelve dollars; confectionery establishments, twelve dollars; dealers of every description in the several markets, except farmers and producers, five dollars; florists, fifteen dollars; land and improvement companies, fifty dollars; undertaking establishments, twenty-five dollars.

Par. 47. That any person violating any of the provisions of this section shall, on conviction thereof in the police court of the District of Columbia, be punished by a fine of not more than five hundred dollars for each offense, and in default of payment by imprisonment not exceeding thirty

days, in the discretion of the court, except as otherwise provided in this section.

Par. 48. That for the purposes of this section the word "person" shall signify and include firms, corporations, companies, associations, executors, administrators, guardians, or trustees; the word "agent" shall signify and include every person acting for another; the word "merchandise" shall signify and include every article of commerce, whether sold in bulk or otherwise; the word "dealers" shall signify and include every person engaged in selling or offering for sale any description of merchandise or property. Words of one number shall signify and include words of both numbers, respectively, and words of one gender shall signify and include words of every gender, respectively: *Provided,* That nothing in this section shall be interpreted as repealing any of the police or building regulations of the District of Columbia regarding the establishment or conduct of the businesses, trades, professions, or callings herein named.

Sec. 8. That all laws and parts of laws inconsistent with this act are repealed.

Approved, July 1, 1902.

(2209)

IN THE

Supreme Court of the United States

October Term, 1920.

No. 328.

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

vs.

DISTRICT OF COLUMBIA, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND MOTION TO REQUIRE WHOLE RECORD TO BE SENT UP.

Supplemental Brief for Petitioners.

VERNON E. WEST,
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Attorneys for Petitioners.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1920.

No. 300.

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

vs.

DISTRICT OF COLUMBIA, RESPONDENT.

CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND MOTION TO REQUIRE WHOLE RECORD TO BE SENT UP.

Supplemental Brief For Petitioners.

In closing our original brief in this case we referred to the apparent assumption by Congress of the power to tax the people of this District and apply the proceeds to the payment not only of the expense of the Government of the District, but when not needed for that purpose to the payment of the expenses of the Government of the United States.

We stated that this situation required an examination into the authority under which the United States exercises the right of local taxation in the District, our

object being to ascertain whether there are any limits to this power and if so what those limitations are.

We have not been able to complete this examination even to our own satisfaction, but we have gone far enough to reach the conclusion that Congress has no power to lay any tax whatever on the people of the District even to raise funds to pay for local expenses, unless such taxation is provided for through some body in which the inhabitants of the District are represented.

We are of course aware of the fact that since 1878, Congress from time to time has taxed us at its pleasure and that no objection to such taxation has been made in any judicial proceeding. Nevertheless, we are of opinion that the question of the right of Congress in this regard is an open one and that the time has arrived when it should be determined in this court where only a final conclusion on the subject can be reached.

It is true that this subject was not broached in this case in either of the courts below. But in bringing this suit the petitioners asserted that the Act of 1917 is altogether void. The Court of Appeals has certified to this court for its determination certain questions relating to the construction of that act and involving its validity. As authorized by Section 251, of the penal code, we have asked the court to have the whole case brought up in order that it may be determined here once for all whether the provisions of the act are in any respect enforceable. If the court shall deem it proper to do this, the whole case will be here. It requires no argument to demonstrate that if there be a doubt as to the validity of all acts of Congress taxing the unrepresented people of the District, the exact legal situation in that regard should be made known at the earliest possible moment to Congress, as well as to the taxpayers.

It is well said by J. Randolph Tucker, in Vol. 2, page 598, of his work on the Constitution, that the powers of the

Government of the United States in this District under the Constitution are *exclusive, not absolute.* Yet the claim of such absolute power was wrongfully insisted upon, and for seventeen years exercised by the United States in other respects than through taxation. A police court was created here in 1870 (16 Stats., 153), under which all trials in that court were conducted without a jury. This went on from 1870 to 1887. Even then it was earnestly urged in this court by the United States, through its Solicitor General, that persons accused of crime in the District of Columbia are not entitled to a trial by jury. But this court, speaking through Mr. Justice Harlan, said:

> "There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of this District may be lawfully deprived of the benefit of any of the constitutional guaranties of life, liberty, or property—especially of the privilege of trial by jury in criminal cases."
>
> Callan *v.* Wilson, 127 U. S., 540.

It is, therefore, not surprising that Congress should have assumed erroneously that those who reside here are not within other protecting clauses of the Constitution than those which relate to trial by jury.

I.

When the Constitution of the United States Was Adopted, it Was the Right of Every Citizen That He Should Not Be Taxed Except By His Own Consent Given in Person or Through His Representative.

The Stamp Act was signed by the King in March 1765. It had long before been under consideration by the Ministry of Great Britain. Regarding it, the City of Boston at its annual meeting in May, 1764, gave certain

instructions to its representatives in the General Assembly of Massachusetts. In these instructions, it was said:

> "If taxes are laid upon us in any shape without our having a legal representative where they are laid, *are we not reduced from the character of free subjects to the miserable state of tributary slaves?*"

On the 29th of May, 1765, the Virginia Assembly adopted resolutions proposed by Patrick Henry, one of which was:

> "*Resolved*, That the taxation of the people by themselves or by persons chosen by themselves to represent them who can only know what taxes the people are able to bear and the easiest mode of raising them, and are equally affected by such taxes themselves, *is the distinguishing characteristic of British freedom, and without which the ancient constitution can not exist.*"

In September, 1765, the town of Boston again instructed its representatives in the assembly as follows:

> "The most essential rights of British subjects are those of being represented in the same body which exercises the power of levying taxes upon them and of having their property ~~taxed~~ by juries. *These are the very pillars of the British Constitution founded on the common rights of mankind.*"

The "Stamp Act Congress," composed of representatives of most of the colonies, which convened in New York in October, 1765, adopted resolutions, the second and third of which were as follows:

> "2. That his Majesty's liege subjects in these colonies are entitled to all the inherent rights and privileges of his natural born subjects within the Kingdom of Great Britain.
>
> "3. *That it is inseparably essential to the*

> *freedom of a people and the undoubted right of Englishmen*, that no taxes should be imposed on them but with their own consent given personally or by their own representatives."
>
> Niles Principles and Acts of the Revolution (Ed. of 1876), p. 163.

Among the most potent influences which led the colonists to resist the Stamp Act were the "Letters of a Farmer," written by the lawyer, John Dickinson, of Pennsylvania, and addressed to his fellow citizens. Franklin, who was sent to London to endeavor to prevent the passage of the Stamp Act, caused these letters to be reprinted in London, and they were translated into French and published in Paris.

Dickinson was a member of the Stamp Act Congress, and was also a member of the Constitutional Convention of 1787. The tenor of these celebrated epistles is sufficiently indicated by what he said in his Letter VII.

> "If they (Parliament) have any right to tax us, then whether our own money shall continue in our pockets or not depends no longer on us but on them. . . . *Those who are taxed without their own consent given by themselves or their representatives are slaves.*"

In March, 1774, when the difficulties between the British Ministry and the American Colonies were flagrant, Lord Camden (then Chief Justice of the Common Pleas) in a speech in the House of Lords said:

> "My position is this—I repeat it—I will maintain it to my last hour—taxation and representation are inseparable. This position is founded on the laws of nature; it is in itself an external law of nature, for whatever is a man's own is absolutely his own; no man has a right to take it from him without his consent either expressed by himself or representative. Whoever attempts it attempts

> an injury; whoever commits it commits a robbery —he throws down and destroys the distinction between freedom and slavery. . . . The forefathers of the Americans did not leave their native country and subject themselves to every danger and distress to be reduced to a state of slavery. . . . In the words of Mr. Locke what property have they in that which another may by right take when he pleases himself."

This speech of Lord Camden's was published by Dickinson in his Letter No. VIII. It will be found in full in "History of Debates and Proceedings of Parliament from 1743 to 1774," Vol. 4, pages 364-367.

Lord Chatham in the House of Lords in December, 1775, in a speech relating to the rebellion in the American Colonies said:

> "Property is in its nature single as an atom. It is indivisible, can belong to one only and can not be touched but by his own consent. The law that attempted to alter this disposed of it, annihilates it. The spirit which now resists your taxation in America is the same which formerly opposed, and with success opposed, loans, benevolences and ship money in England, . . . the same spirit which establishes *the great fundamental and essential maxim of your liberties* that no subject shall be taxed but by his own consent."

(This and other speeches by Pitt on the same subject are quoted by Bancroft in his History of the United States, vol. 5, pages 384 to 395, edition of 1852, Little Brown & Co.)

It can not be disputed that when the colonies established their independence it was recognized by all of them that not only is taxation without representation tyranny, but that the right to be represented before he can be taxed is a fundamental right the deprivation of which reduces the injured person or community to a state

of slavery. It was deemed to be as important and fundamental as the right of trial by jury. It was, in substance, the same as the right that private property should not be taken for public use without just compensation.

These have been the rights of Englishmen for a thousand years. The Declaration of Independence discloses that these are among the rights to maintain which our forefathers drew the sword. They are today the rights of the inhabitants of this District, unless they have been voluntarily surrendered.

And these rights existed to their fullest extent in the residents of Montgomery and Prince George's Counties when a part of each of those counties was transferred to the Federal District of the Constitution.

It is next to be considered to what extent, if at all, the inhabitants of the ceded territory were deprived of their rights as to taxation when they became citizens of the District of Columbia.

The Rights of the Inhabitants of the Federal District as to Taxation For Local Purposes Were in No Degree Impaired When They Ceased to Be Citizens of Maryland or Virginia and Became Subject Only to the Sovereignty of the United States.

In so far as the cession itself is concerned, there is no room for argument. The Act of Cession passed by the Maryland legislature expressly provided:

> "That nothing herein contained shall be so construed to vest in the United States any right of property in the soil or to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States."

Tindal's The City of Washington, 31,167.

A similar provision was embodied in the Virginia Act of Cession (Tindal 32). These acts and the other acts of Virginia and Maryland and the proceedings under which the transfer of the jurisdiction to the United States was completed, are set forth in Morris *vs.* United States, Potomac Flat Cases, 174 U. S., p. 196.

If the residents of the ceded territory lost their right to be represented in any body that imposed taxes on them, they lost it by virtue of some express provision of the Constitution. In the creation of that instrument they were represented by the Virginia and Maryland delegates in the Convention of 1787, and they were represented in the conventions of their respective States when Virginia and Maryland ratified the Constitution.

The express provisions of the Constitution as to taxation are as follows:

> "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.
>
> . . . . . .
>
> "No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."
>
> Art. I, secs. 8 and 9.

We make no question that the people of this District are subject to taxation by Congress under these provisions of the Constitution, as well as under the amendment giving Congress the power to impose an income tax. As to the direct tax provision, it was so held by this court in Loughborough *vs.* Blake, 5 Wheat., 317.

But obviously a different question arises as to taxation for local purposes in the District of Columbia. That depends upon the proper interpretation of paragraph 16

of Section 8, of Article I, of the Constitution, which gives Congress power:

> "To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding 10 miles square) as may, by cession of particular States, and the acceptance by Congress, become the seat of the Government of the United States and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings."

There seems to be nothing in the recorded proceedings of the Constitutional Convention that throws any light upon the meaning given by the convention to the words "exclusive legislation" in this clause of the Constitution. It was adopted without debate.

But Madison, in discussing this provision in the *Federalist* (No. XLIII), says:

> "The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature of the union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight, as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the government, as still

> further to abridge its necessary independence. The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it; *as the State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it*; *as the inhabitants* will find sufficient inducements of interest to become willing parties to the cession; as they *will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them;* and as the authority of the legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole people of the State, in their adoption of the Constitution, every imaginable objection seems to be obviated."

When this number of the *Federalist* was written, there was already a strong probability that the federal district would be located on the Potomac River. Madison, therefore, in urging the ratification of the Constitution was addressing the people of his own State and telling them that, if any of Virginia's citizens should be transferred to the jurisdiction of the new government, they would, "of course," have the right to regulate their own local affairs.

Our claim that the right of Congress to exercise exclusive *legislation* in this District does not include the power to tax, is sustained by the history of the events which led to the independence of the Colonies and the adoption of the Constitution.

The great contention of the Colonists in their controversy with Parliament over the Stamp Act in 1765-6 was

that the parliament's admitted power to legislate for the Colonies did not include the power of internal taxation—that legislation is one thing, and taxation another.

Bancroft in his history of the United States says Pitt, Barre and Beckford, contended that the taxation of America was against the inherent distinction between taxation and legislation which pervades modern history." Thus Pitt (not yet Lord Chatham) in his memorable speech in the House of Commons on the 14th of January, 1766, in support of the bill to repeal the Stamp Act, said:

> "It is my opinion that this Kingdom has no right to lay a tax upon the Colonies. At the same time I assert the authority of this Kingdom over the Colonies to be sovereign and supreme in every circumstance of government and legislation whatsoever. . . . *Taxation is no part of the governing or legislative power.* The taxes are a voluntary gift and grant of the Commons alone. . . . The gift and grant is of the Commons alone. . . . When . . . in this House we give and grant, we give and grant what is our own. But in an American tax what do we do? Our own property? No! We give and grant to your Majesty the property of your Majesty's Commons in America! It is an absurdity in terms. *The distinction between legislation and taxation is essential to liberty.* . . . The Commons of America represented in their several assemblies have ever been in the possession of this their constitutional right of giving and granting their own money. They would have been slaves if they had not enjoyed it. Three millions of people so dear to all the feelings of liberty as voluntarily to submit to be slaves would have been fit instruments to make slaves of the rest."
>
> History of Debates in Parliament, Vol. 4, pages 288-291.

This speech was published everywhere in the Colonies and was universally acclaimed as an accurate statement of the position of the Colonists.

Pitt's declaration that taxation is no part of the governing or legislative power was but a restatement of an ancient principle of the English Constitution.

> "In the earliest parliamentary records the lords and commons summoned in a great measure for the sake of relieving the King's necessities appear to have made their several grants of supplies without mutual communication. . . . *These were not in the form of laws*, nor did they obtain any formal assent from the King, to whom they were tendered in written indentures, entered afterward on the roll of parliament."
>
> Hallam's Const. History of England, Vol. 3, p. 34 (Boston, 1861 ed.).

Hallam traces here the changes made from time to time in the form of money-bills in parliament, concluding by saying:

> "In the first parliament of Charles I, the commons began to omit the name of the lords in the preamble of bills of supply, reciting the grant as if wholly their own, but in the enacting words adopted the customary form of Statutes. This though once remonstrated against by the upper house, has continued ever since to be the practice."
>
> Pp. 35, 36.

The Stamp Act itself bears witness to the correctness of Hallam's statement on this subject. It recites:

> "The Commons of Great Britain in parliament assembled have therefore resolved *to give and grant* to your Majesty the several rates and duties hereinafter mentioned."

The Bill of Rights adopted by Parliament in October, 1689, declared:

> "4. That the lay ng of money for or to the use of the Crown by pretence and prerogative *without grant of parliament* for longer time or in other manner than the same is or shall be granted is illegal."
>
> Hallam's Const. History of England, Vol. 3, p. 105.

In every history of these pre-revo'utionary times, it is recorded that the Colonists recognized the right of Parliament to enact laws for their government. But from one end of the colonial territory to the other they resisted the efforts of Parliament to tax them on the principle laid down by their champions in Parliament that taxation is not legislation.

When it became evident that the Colonies would resist by force of arms if necessary, the enforcement of the Stamp Act, Pitt in concluding another speech on the subject said:

> "Upon the whole, I will beg leave to tell the house what is really my opinion. It is that the Stamp Act be repealed absolutely totally and immediately. That the reason for the repeal be assigned because it was founded on an erroneous principle. At the same time let the sovereign authority of this country over the Colonies be asserted in as strong terms as can be devised and be made to extend to every point of *legislation* whatever. That we may bind their trade, confine their manufactures, and exercise every power whatever, except that of taking their money out of their pockets without their consent!"
>
> History of Debates in Parliament, Vol. 4, page 297.

The Contemporaneous Construction of the "Exclusive Legislation" Provision of the Constitution, Continued For Over Seventy Years, Demonstrates That It Was Not Held to Deprive the Inhabitants of the District of Their Right to Be Represented in Any Body That Should Be Empowered to Tax Them.

Prior to the cession of the territory comprising the original federal district, the inhabitants were taxed by their respect ve States and by several municipal corporations theretofore created by the States. The town of Alexandria had been such a corporation for many years. Georgetown was incorporated in 1789. That part of the ceded Maryland territory which lay outside of Georgetown was within the jurisdiction of a body composed of justices of the peace called the Levy Court, whose principle function was to construct and keep in repair roads and bridges and to take charge of paupers. A similar body exercised practically the same jurisdiction in that part of the territory ceded by Virginia which lay outside of Alexandria.

All these bodies had the usual taxing powers and all continued to exercise them after the cession.

By the act approved February 21, 1801 (2 Stats., L., 103), Congress formally assumed jurisdiction over the District. That act continued in force the law of Virginia and Maryland respectively. It expressly provided that nothing in the act should "in any wise alter, impeach or impair the rights granted by or derived from the acts of incorporation of Alexandria and Georgetown or of any other body corporate within said District except so far as relates to the judicial powers of the corporations of Georgetown and Alexandria."

By an act approved May 3, 1802 (2 Stat., 193), Congress incorporated the City of Washington giving it

the usual municipal powers, including expressly the power "to lay and collect taxes."

The powers of the Levy Court and of the corresponding body in Alexandria County were defined and continued by several Acts of Congress. Act Feb. 21, 1801 (2 Stat. 103); Act May 3, 1802 (2 Stat. 193); Act July 1, 1812 (2 Stat. 771).

From this time till 1846, when the Virginia part of the District was given back to that State, and as to the remainder of the District till 1871, the inhabitants of the District through these several municipal corporations continued to tax themselves. Changes were made from time to time in the charters of these bodies but their taxing powers it is believed remained till they were all abolished by the act of February 21, 1871 (16 Stat., 119).

That act created a municipal corporation called the District of Columbia comprising the entire District. It provided a legislature composed of an assembly to be elected by the people, a council to be appointed by the President, and a Governor, also to be appointed by the President. In addition it created a Board of Public Works to be appointed by the President. The legislature was authorized to raise money by taxation to meet necessary appropriations.

This form of government continued till it, in turn, was abolished by the act of June 20, 1874 (17 Stat., 116), which provided for a board of three commissioners, to which board was given certain executive authority. Section 4 of the act levied a tax on the real estate in the District for the support of its government.

Section 5 of the act provided for a select joint committee "to prepare a suitable form of government for the District of Columbia," and report the same to the two Houses on the first day of the next session. The joint committee was further instructed to submit at the same

time a statement of the proper proportion of the expenses of the District Government which should be borne by the District and the United States respectively.

For the next four years the temporary form of government of the District provided by the Act of 1874 continued in existence because Congress was unable to agree to the plan proposed by the joint select committee or to any one of several other plans submitted by other committees. The principle cause of the delay grew out of the question of suffrage—some members favoring it, others opposing it. Finally, the Act of June 11, 1878, was passed (18 Stats., 102). It is entitled, "An Act providing a permanent form of government for the District of Columbia." It continued the government by three Commissioners to be appointed by the President, and authorized the Commissioners to apply the taxes and other revenues to the payment of its expenses. Section 4 of the act provided that one-half of the appropriations for District expenses, including interest on the bonded debt, should be paid by the United States and the other one-half out of District taxes. The act fixed the rate of taxation at $1.50 in the hundred on both real and personal property. It gave the inhabitants of the District no representation in their government and no voice or vote as to their taxation. It directed that two of the three Commissioners before their appointment should have been actual residents of the District for three years, claiming residence nowhere else.

By Section 4 it was required that all taxes collected should be paid into the Treasury of the United States to be disbursed with money appropriated by Congress for the expenses of the District. Other statutes relating to this last mentioned provision are referred to by the Comptroller of the Treasury in his opinion from which we have quoted on page 47 of our original brief.

It was of this act that this court said in Eckloff *vs.* United States, 135 U. S., 240:

> "The court below (Supreme Court of the District) placed its decision on what we conceive to be the true significance on the act of 1878. As said by that court, it is to be regarded as an organic act, intended to dispose of the whole question of a government for this District. It is, as it were, a constitution for the District. It is declared by its title to be an act to provide 'a permanent form of government for the District.' The word permanent is suggestive. It implies that prior systems had been temporary and provisional. As permanent it is complete in itself. It is the system of government. The powers which are conferred are organic powers. We look to the act itself for their extent and limitations. It is not one act in a series of legislation, and to be made to fit into the provisions of the prior legislation, but is a single complete act, the outcome of previous experiments, and the final judgment of Congress as to the system of government which should obtain. It is the constitution of the District, and its grants of power are to be taken as new and independent grants, and expressing in themselves both their extent and limitations. Such was the view taken by the court below; and such we believe is the true view to be taken of the statute."

And it was of this act that the Comptroller of the Treasury held that as to the payment of the interest on the bonds issued under it the act created a contract not only between the United States and the bondholders but between the United States and the people of the District of Columbia (Comptroller's Decisions, page 467.)

From the foregoing brief review of the acts of Congress from the time that it assumed jurisdiction over this district it appears:

1. That from the time of the cession till 1871, the

inhabitants of the District taxed themselves through their elected representatives except that in that part of the territory which was not included in the municipal corporations of Washington, Georgetown and Alexandria, they were taxed by what were substantially county commissions composed of justices of the peace appointed by the President.

2. That from 1871 till 1874 they were taxed by a local legislature, one branch of which was elected by them and the other appointed by the President.

3. That from 1874 till 1878 Congress had under consideration various plans providing for a permanent form of government for the District and that meanwhile Congress regulated taxation in the District.

4. That from 1878 till the current fiscal year, one-half of the expenses of the District Government were required to be paid out of the revenues of the District produced by laws enacted by Congress and the other one-half by the United States.

Thus till 1874 the people of the District were fully protected in their right to be represented in the body that taxed them; during the next four years they were in the position of one of the territories, waiting for Congress to decide on their form of government; and from that time till the legislation referred to in the closing paragraphs of our original brief they have been amply protected from excessive or unfair taxation by the fact that for every dollar taken from them in taxes the United States was required to appropriate a dollar from its treasury, just as in regard to the taxation clauses of the Constitution, Chief Justice Marshall in Loughborough *vs.* Blake, 5 Wh., 317, said:

> "If it be said, that the principle of uniformity, established in the Constitution, secures the district from oppression in the imposition of direct taxes, it is no less true, that the principle of apportion-

ment, also established in the Constitution, secures the district from any oppressive exercise of the power to lay and collect direct taxes."

Acquiescence in such taxation under these circumstances it is submitted can not be considered as binding them to continue to submit when the protection afforded them by the act of 1878 is withdrawn. That would be as illogical as to hold that they had waived their right to trial by jury because for seventeen years they did not complain that their rights in that regard were disregarded in the organization of the Police Court.

As to the Decisions of This Court and the Courts of the District of Columbia, Relating to the Taxing Powers of Congress in the District.

In Loughborough *vs.* Blake, 5 Wheaton, 317, it was held that an act of Congress was valid which included the District of Columbia in the levying of a direct tax under the provisions of sections 8 and 9, of article I, of the Constitution. Chief Justice Marshall in delivering the opinion of the court said it was admitted that in legislating in its capac ty as a local legislature Congress had the power of levying direct taxes.

This of course was not a decision of the court—especially as at that very time as we have seen the people of the District were taxing themselves. It is believed that up to that time Congress had not attempted to tax the District otherwise than through its municipal corporation in the towns or through its justices of the peace in the counties.

However, in Gibbons *vs.* District of Columbia, 116 U. S., 404, there was involved the validity of a tax sale of land in Washington which it was claimed was exempt as

church property. It was claimed by the land owner that the act of Congress imposing the tax was void because it taxed property outside of the cities of Washington and Georgetown used solely for agricultural purposes at a lower rate than it taxed other property. Mr. Justice Gray in delivering the opinion of the court said that this contention was founded on a misunderstanding of the case of Loughborough *vs.* Blake and added (page 407):

> "The point there decided was that an act of Congress, laying a direct tax throughout the United States in proportion to the census directed to be taken by the Constitution, might comprehend the District of Columbia; and the power of Congress, legislating as a local legislature for the District, to levy taxes for District purposes only, in like manner as the legislature of a State may tax the people of a State for State purposes, was expressly admitted, and has never since been doubted. 5 Wheat., 317; Welch *vs.* Cook, 97 U. S., 541; Mattingly *vs.* District of Columbia, 97 U. S., 687. In the exercise of this power, Congress, like any State legislature unrestricted by constitutional provisions, may at its discretion wholly exempt certain classes of property from taxation, or may tax them at a lower rate than other property."

Of the two cases here cited by Mr. Justice Gray, one, Welch *vs.* Cook, merely held that an act of the District legislature exempting from taxation for ten years property used for manufacturing purposes was as to the exemption repealed by a subsequent act of Congress which levied a tax on real estate with certain exceptions, not including real estate used in manufactures. The other case, Mattingly *vs.* District of Columbia, upheld the power of Congress to confirm certain special assessments for street and sewer improvement. But Mr. Justice

Strong in delivering the opinion of the court took occasion to say:

> "Under the Constitution, Congress had power to exercise exclusive legislation in all cases whatsoever over the District and this includes the power of taxation. Cohens *vs.* Virginia, 6 Wh., 264."

This too was a dictum, not a decision. And Cohens *vs.* Virginia involved only certain questions of the jurisdiction of the court and the further question whether an act of Congress giving the corporation of Washington the privilege of raising money for the expenses of the city government by selling lottery tickets gave the corporation the right to force the sale of such tickets in Virginia notwithstanding that Virginia had made the selling of lottery tickets in that State a penal offence. There is not a word in the opinion of the court referring even indirectly to taxation in the District. In Gibbons *v.* District of Columbia the question submitted to the Court and argued was not whether Congress had the power to tax, but whether it had the right to discriminate in the rate of taxation between land used for agricultural purposes and other land.

It is submitted that whether the power of exclusive legislation in this District conferred upon Congress by the Constitution gives to Congress power to tax us entirely in its discretion and without giving us representation in the taxing body has never been submitted to, much less decided by, this court.

More apposite than the language used by the court in any of the foregoing cases is what was said by Mr. Justice Miller in delivering the opinion of the court in Loan Association *vs.* Topeka, 20 Wall., 655, in which he referred to the statement made by Chief Justice Marshall

in McCulloch *vs.* Maryland (4 Wheaton, 431), that the power to tax is the power to destroy and said:

> "The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. . . . There are limitations on such power which grow out of the essential nature of all free governments—implied reservation of individua rights, without which the social compact could not last and which are respected by all governments entitled to the name. . . . Of all powers conferred upon government that of taxation is most liable to abuse."

There have been several cases in this court in which it has been held that Congress has the power to authorize public improvements in the District and to cause the expense thereof to be paid in whole or in part by special assessments on the land benefited by the improvement.

Willard *vs.* Presbury, 14 Wall, 676.
Bauman *vs.* Ross, 167 U. S., 548.
Wilson *vs.* Lambert, 168 U. S., 611.
Parsons *vs.* D. C., 170 U. S., 282.

In some of these cases the justice delivering the opinion upholding the power of Congress in this regard used language that would apply to taxation in general; but there is no case we believe in which the right of Congress to levy general taxes on the inhabitants of the District has been actually in issue.

That the power to impose special assessments of this character does not include the power to levy general taxes would seem to be clear from the elaborate opinion of this court delivered by Mr. Justice Brewer in Illinois Central Railroad Company *vs.* Decatur, 147 U. S., 190.

In that case the single question was whether exemption from taxation carries exemption from special assessments for public improvements. The opinion demonstrates by many citations as well as on principle that such an

assessment is not to be classed with general taxes, and quotes from a New York case where it is said:

> "The word taxes means burdens, charges or impositions put or set upon persons or property for public uses. . . . But to pay for the opening of a street in a *ratio* to the benefit or advantage derived from t, is no burden (pp. 199, 200)."

It is respectfully submitted:

1. That the inhabitants of the American Colonies of Great Britain from 1764 to 1776, held that a people whose property could be taken from them under the guise of general taxation by a body in which they were not represented were slaves.

2. That they conceded the right of the parliament of Great Britain to make laws for their government but denied that such right of legislation embraced the right to tax.

3. That rather than give up their liberty by submitting to taxation without representation, they went to war and so achieved their independence.

4. That when they organized a government of their own and provided in the Constitution for a permanent seat of government in a district in which their Congress should have the power of "exclusive legislation" they did not intend to confer a power which they had asserted in their controversy with parliament would violate the inherent and fundamental rights of mankind and reduce to slavery those who should become subject to the exercise of such power.

5. That as Congress for more than seventy years recognized the right of the inhabitants of the District to take part in the imposition of taxes on themselves and then after four years of consideration of the best form of government for the District afforded the people of the District ample protection from unjust taxation by as-

suming an equal liability for the expenses of the District Government there has been no occasion till now for the taxpayers of the District to assert their rights in this regard, and that consequently there has been no decision by this court, or by any court, which precludes them from now asking this court to determine whether they are freemen or slaves.

But Congress has now gone farther in taxing this District than parliament ever attempted to go with the Colonies.

The act of 1917, in connection with the other legislation of Congress to which we referred in closing our original brief and the statutes relied upon by the Comptroller of the Treasury in his opinion, from which we there quoted, is directed to the raising of a fund to be deposited in the United States Treasury and to be used with funds collected from other sources for the payment of the expenses of the general government. This is demonstrated by the act of June 5, 1920, and the order of the District Commissioners of June 26, 1920.

Even the Stamp Act was less objectionable than this. By its last section it was provided that the money raised by the sale of the stamps should be—

> "Held in reserve to be used from time to time by the parliament for the purpose of defraying the expenses necessary for the defense, protection and security of the said colonies and plantations."

Respectfully submitted.

VERNON E. WEST,
A. S. WORTHINGTON,
Attorneys for Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 300.

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

vs.

DISTRICT OF COLUMBIA.

BRIEF FOR RESPONDENTS.

Statement of the Case.

Eugene Peters is a resident of the District of Columbia, legally adjudged a lunatic by the Supreme Court of the District, and his committee are well-known members of the Bar of the District. These facts do not appear affirmatively on the record, but nowhere in the record is there any claim that any of them is a non-resident; nor is there in the brief of counsel any question raised that the committee or the lunatic is entitled to any privileges or immunities of non-residents. Indeed, brief of petitioners concedes, page 3, that

they are residents. It would appear, in the same manner, that the property taxed, involved in this case, is located within the District. Likewise, there is no claim that there are any stocks or bonds of States or municipalities taxed or attempted to be taxed, or that there are any shares of stock of corporations entitled to special franchises.

ARGUMENT.

I.

The question in the case then seems to be, Whether the intangible property of a resident lunatic, in the hands of his committee, also resident, is subject to be taxed in the jurisdiction of his residence, and the residence of his committee, where the intangibles are also situated, and which are not exempt under some specific provision of the law.

The power to tax property of residents within the jurisdiction cannot well be denied, and, indeed, is conceded by counsel (Brief of Petitioners, pp. 17, 18). The questions raised by petitioners are moot questions and do not arise in the present case, and therefore require no decision from this court (D. C. *vs.* Brooke, 214 U. S., 138; Farmers' Bk. *vs.* Minn., 232 U. S., 516, 530; District of Columbia *vs.* Green, 29 App. D. C., 296, 299). If Congress had attempted to impose a tax upon the petitioners which it had no power to lay, a very different situation would arise.

Treating, however, the questions raised by the petitioners in their order—

II.

Whether under the phrase "Engaged in business within said District" is an attempt to tax non-residents on their entire business or their entire money and credits.

It will be observed that this act is an amendment to section 6 of the act of July 1, 1902, constituting the personal-tax law for the District of Columbia (32 Stat., 617). The amendment provides that intangibles "Shall be scheduled and appraised in the manner provided by paragraph one of said section 6 for listing and appraisal of tangible personal property and assessed at their fair cash value," etc. Under section 6 (see Petitioners' Brief, p. 51) the board of personal-tax assessors are directed to "Under the direction and supervision of the assessor, assess personal property in the District of Columbia as follows," etc. In construing, therefore, the phrase of the amendment as to what money or credits or business of a non-resident is taxable under it, we are limited by the provision of the amended act to "Personal property in the District of Columbia." And this construction has been uniformly the one adopted by those charged with the enforcement of those acts. Again, in paragraph 5 of the act of 1902, as amended by the act of April 19, 1904 (33 Stat., 564), the tax on street-railroad companies is limited to their "Gross receipts in the District of Columbia," because of the well-known fact that some of the street railroads derive receipts from business outside of the District. Again, in paragraph 6, the tax on fidelity companies, which are known to operate within as well as without the District, the tax is laid upon "their gross receipts in the District of Columbia." (See Petitioners' Brief, p. 55.) The inference is fairly clear from these provisions that when Congress taxed corporations doing business without as well as within the District the tax should be confined to business within the District. It might be contended, also, that as to property or business outside of the District a protesting person or corporation would not be a person or corporation "engaged in business within said District" for the purpose of taxation. A strictly grammatical construction of the act might make him so, but a legal interpretation, in the light of previous legislation, might have the opposite result, as the taxing officers claim it does here.

The construction expounded is not a reasonable one and

is one which would make the act invalid, a result to be avoided if possible, if there be another and reasonable interpretation which would permit the act to stand. U. S. *vs.* Del. & Hudson Co., 213 U. S., 366; Lansburgh *vs.* District of Columbia, 11 App., 512, 527; Chapman *vs.* U. S., 5 App. D. C., 122, 131. In Kentucky a tax law couched in general terms was confined to money arising from business done by an agent within the State (Com. *vs.* Ins. Co., 149 Ky., 380).

While a State may not tax property beyond its jurisdiction, or burden interstate commerce in any form, yet it may impose a tax on "the privilege of being a corporation" (Kansas City *vs.* Kansas, 240 U. S., 227, 232), although part of the capital measuring the tax is without the State; also Maxwell *vs.* Bugbee, 250 U. S., 525. A tax on income of a domestic company may include profits from interstate commerce (U. S. Glue Co. *vs.* Oak Creek, 247 U. S., 321). So, accepting for the purpose of argument merely, the proposition that the law taxes the entire amount of intangibles of non-residents and viewed merely as a question of power, it cannot be said with certainty that Congress overstepped constitutional limitations in imposing such a tax for the privilege of doing business within the District over which it has plenary jurisdiction. Such, however, has not been the interpretation of the law by the local authorities.

III.

It is argued, also, that the law is void because "it attempts to tax the bonds and other securities of the States and other municipal corporations."

This is a rather extravagant statement. Neither States nor municipalities are mentioned in the statute. It is couched in general terms, as such statutes usually are; and if the rule insisted on by the appellants should prevail, many tax laws

of the District of Columbia, and probably in the States, would be void. It is sufficient to say, perhaps, that no tax has ever been collected on such bonds, and no case has been cited by the appellants in which the application of the rule as stated by them has destroyed a tax law.

The case of Farmers' Bank *vs.* Minn., 232 U. S., 516, cited by appellant to sustain the alleged rule, is a strong argument against it. There the State ought to tax the bonds of municipalities in Indian Territory and the Territory of Oklahoma held by the bank, under a law taxing the surplus as credits and to be ascertained by "deducting from its assets (other than real estate which is separately assessed), the amount of the deposits and of all other accounts payable (pp. 520, 521). There was no exemption of municipalities; had there been the case could not have arisen; but it appears plainly from the opinion (p. 529) that the tax on the surplus was sustained as to the inclusion within the surplus of $161,000 secured by mortgages on Minnesota real estate. The court did not hold the law invalid, but said that "by the application of principles long established" (p. 521) such bonds could not be taxed by the State. It is also significant that the court said (p. 530) that if there were no discriminations against savings banks, to which class the plaintiff belonged, it would not inquire "whether the act discriminates against other banks and trust companies."

This court has had occasion to construe words of general import and has generally construed them so as to confine the operation of laws within constitutional limitations unless the wording of the law was such as to prevent such a construction, as in the Employers' Liability Cases, 207 U. S., 463, where such a construction destroyed another and important part of the law.

There the court was asked to read a limitation into the law which would destroy it in another important particular. That is not the case here. When the question arises, and it does not arise upon the facts presented here, the court will

only be asked to sustain the municipal officers in their interpretation, which is a reasonable one and one within constitutional limits. In other words, the court will merely be requested to apply the elementary principle that where there are two constructions open, one of which will destroy and the other save the law, the court will adopt that interpretation which will save the law unless the language be so plain as to make the other course necessary. It is believed to be the settled doctrine that where laws are couched in general terms the courts will confine their operation within constitutional limitations. (United States *vs.* Palmer, 3 Wheat., 610, 631.)

> "The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them."

This was a case construing the old statute against piracy, and was limited in its application to vessels of the United States (p. 633, Marshall, C. J.).

In Carlisle *vs.* United States, 16 Wal., 147, 153, construing the general amnesty proclamation following the civil war, the court said:

> "All general terms in statutes should be limited in their application, so as not to lead to injustice, oppression, or any unconstitutional operation, if that be possible. It will be presumed that exceptions were intended which would avoid results of that nature" (p. 153, Field, J.). To the same effect is United States *vs.* Kirby, 7 Wal., 482, 486-7.

In Petri *vs.* Commercial Bank, 142 U. S., 644, 650, the question arose whether a national bank could bring a suit in the United States circuit court where the defendant resided against a citizen of another State on the ground of

diverse citizenship. The court said, page 650 (per Fuller, C. J.):

> "The rule that every clause in a statute should have effect, and one portion should not be placed in antagonism to another, is well settled; and it is also held that it is the duty of the court to ascertain the meaning of the legislature from the words used and the subject-matter to which the statute relates, and to restrain its operation within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never intended to include in it. Brewer's Lessee *vs.* Blougher, 14 Pet., 178; Market Co. *vs.* Hoffman, 101 U. S., 112, 115."

See also Waters-Pierce Oil Co. *vs.* Deselms, 212 U. S., 159, 173, in which a statute of Oklahoma was held to mean exactly the opposite of what the grammatical construction called for, because of the fact that the "words of the statute are somewhat confusedly expressed" (p. 173) in prescribing tests for inflammable oils.

In the case of the State Tax on Foreign-held Bonds, 15 Wal., 300, there was drawn in question the validity of the Penn. tax of 5% on the interest of bonds held by non-residents. The law was not held to be invalid *in toto,* but only its operation beyond the State. The court said, page 326:

> "The extraterritorial invalidity of State laws * * * must * * * attend State legislation which seeks to change the obligation of such contracts in any particular,"

i. e., the contract between the corporation and the bondholder for the payment of interest. This decision followed R. R. *vs.* Jackson, 7 Wal., 262, 269:

> "The decision was placed mainly on the ground that, looking at the several provisions bearing upon the question, and giving to them a reasonable construction, it was believed not to be the intent to impose an income tax on non-resident aliens."

This case arose over an attempt to collect an income tax from non-resident aliens under the act of June 30, 1864, which taxed the income of "every person residing in the United States, or of any citizen residing abroad," pages 263, 269.

Guy *vs.* Baltimore, 100 U. S., 434, 443, 444, is another case resembling very closely in principle the case at bar. Acting under authority of the legislature the city of Baltimore had passed an ordinance requiring special wharfage fees to be paid by vessels unloading articles "other than products of the State of Maryland."

On page 439 of the opinion the court approves what it had said in Ward *vs.* Maryland, and adds this language:

> "In view of these and other decisions of this court, it must be regarded as settled that no State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States, more onerous public burdens or taxes, than it imposes upon the like products of its own territory."

The court said at the conclusion of the opinion that the statute of Maryland was in conflict with the power of Congress over commerce "in the respect adverted to."

> "Unless it be impossible to avoid it, a general revenue statute should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid." Field *vs.* Clark, 143 U. S., 649, 696-7.

One provision of a section may be invalid without affecting the rest of a section, just as one section may be invalid without affecting the rest of the law. Berea College *vs.* Ky., 211 U. S., 45, 55; Loeb *vs.* Tp. Trs., 179 U. S., 472, 490.

The complaint against the law because of alleged excessive

penalties will be examined when an attempt is made to enforce such penalties. West. Un. *vs.* Richmond, 224 U. S., 160, 172.

St. Louis S. W. Ry. *vs.* Ark., 235 U. S., 350, 369, 370.
Presser *vs.* Ill., 116 U. S., 252, 269.

> "Every reasonable construction must be resorted to in order to save a statute from unconstitutionality." Hooper *vs.* Cal., 155 U. S., 648, 657.

Neither is it believed that the decision in the Income Tax cases (158 U. S., 601, 635-637) is applicable to the present situation. There the tax was sought to be imposed upon income, a radically different status; and section 28 of that law declared that in estimating income "there shall be included *all income* derived from interest on notes, bonds and other securities, except such bonds of the United States, the principal and interest of which are by the law of their issuance, exempt from all Federal taxation." This language, by necessary implication, excluded other exemptions, and, by the same necessary implication, taxed State and municipal bonds. These implications and inferences do not necessarily arise under the law presently discussed.

These two questions are the only ones asked by the Court of Appeals in its certificate to this court, and it is submitted that they should be answered in the negative.

IV.

Petitioners claim that the law is invalid because of the exempting clause "Nor to shares of stock of business companies which by reason of or in addition to incorporation receive no special franchise or privilege."

The reply to this, as before, is:

The plaintiff is not in this situation and the question does not arise.

This part of the law is copied from paragraph 8, section 6 of the act of July 1, 1902 (32 St., 617), imposing a tax upon tangible personal property. Paragraph 5 of that law taxes banks, trust companies, gas, electric lighting, telephone companies, and street railroads. These corporations, receiving special franchises, are taxed at a much higher rate than individuals, and it was therefore entirely proper, and just, that they should not be subjected to a further tax on either tangibles or intangibles. Paragraph 6 deals with fidelity and guaranty companies. Paragraph 7 with savings banks having no capital stock. Paragraph 8 deals with ordinary business companies which receive no special franchise by reason of incorporation, and they are, accordingly, taxed as are individuals.

There has been no difficulty in the practical application of this feature in either the tangible tax of 1902 or in the law under consideration. Corporations know, or ought to, whether their charters give them especial franchises or not, and return their taxes accordingly. The municipal officers have had no trouble with this feature of the law, and the difficulties apprehended by counsel for plaintiffs are purely imaginary; or at best, they are yet to arise.

This is not a penal law and the doctrine of strict interpretation does not apply. It is true that tax laws are construed in favor of the citizen and against the Government; but when a citizen comes fairly within the class taxed, the same rule of strict interpretation applies against him and in favor of the Government. The plaintiffs fall clearly within the class taxed and as to the subjects taxed.

In passing upon certain sections of the act of 1902, the Court of Appeals said (D. C. *vs.* Fickling, 33 App., 371, 374):

> "Paragraphs 11 and 13 are provisions of a general revenue act. It is well settled that such acts are to be liberally construed for the purpose of carrying out the

intention of the legislature, notwithstanding a penal clause, usual in all such enactments in respect of licenses, for the purpose of securing prompt and effective enforcement.

United States *vs.* Hodson, 10 Wall., 395, 406; 19 L. Ed., 937, 939.

United States *vs.* Stowell, 133 U. S., 1, 12; 33 L. Ed., 555, 558; 10 Sup. Ct. Rep., 244.

Lauer *vs.* District of Columbia, 11 App. D. C., 453, 457."

The clause in question is found among the exemption clauses of the law, and applies to those *corporations* which do not enjoy especial privileges, as distinct from those already heavily taxed, or at least taxed largely in excess of the rate imposed upon individuals (par. 5, act 1902), and which it was not the purpose of the law to tax again. That this is so, appears from the language:

> "Nor shall the provisions of this act apply to *life or fire insurance companies* having no capital stock, nor to the shares of stock of *business companies* which by reason of or in addition to incorporation receive no special franchise or privilege, but *all such corporations* shall be rated, assessed and taxed as individuals conducting business in similar lines are rated, assessed and taxed."

Then follows the exemption of companies which have been taxed as enjoying especial privileges, above referred to.

It may be noted here that the act begins with a general taxing clause imposing a tax upon "money and credits, including moneys loaned and invested, bonds and shares of stock * * * of any person, firm, association, or corporation resident or engaged in business within said District." The committee and the lunatic are both resident here. Then follows the exemption clause:

Saving deposits not exceeding $500.

Exemption of bank notes and discounts, etc.

Exemption of saving institutions, building associations, and various benefit societies.

Life and fire insurance companies having no stock.

Business companies not enjoying special privileges or franchises—assessed as individuals.

Exemption of companies liable to taxation on capital stock or earnings.

The fact that it may be difficult to ascertain, if it be a fact—which is not conceded—what companies enjoy especial privileges or franchises is not an argument against the constitutionality of the law.

Congress may make such distinction between various corporations under its power to legislate for the District. In Gibbons *vs.* District of Columbia, 116 U. S., 404-408, the court said in referring to the question of taxation, "In the exercise of this power Congress, like any State legislature unrestricted by constitutional provisions, may at its discretion exempt certain classes of property from taxation or may tax them at a lower rate than other property." It is not perceived how the fact that some corporations are taxed and some exempted can avail the plaintiff. The true test of a discrimination in the legal sense would be, Are other individuals in the same class with the plaintiff taxed at a different rate or exempt from tax upon the same class of property on which he is asked to pay the tax in this case?

It has been suggested that the foregoing exemption applies to non-residents as well as resident companies. Congress, however, was speaking of District corporations and provided that all corporations should be taxed as individuals in similar lines of business; moreover, this exemption relates to the exemption of certain corporations from taxation and not to the exemption of individuals, who are not concerned with this classification.

Generally it is not perceived why Congress has not the absolute authority in passing a tax law for the District of

Columbia to make a distinction between individuals and corporations and as to the latter to make further distinctions, nor why it could not exempt from taxation certain corporations or associations of a mutual or fraternal or beneficial character and legally impose a tax upon ordinary business corporations as upon individuals.

It may be that these stocks are taxed twice, but as pointed out in Kidd *vs.* Ala., 188 U. S., 730-732, the fact that the stock is taxed elsewhere is not a tax so far as the District is concerned.

Of special interest in connection with the question under discussion and in connection with the rule of construction which saves parts of statutes as valid when the courts find it necessary to declare other parts invalid, are the following cases:

Huntington *vs.* Worthen, 120 U. S., 97. Under the constitution of Arkansas all the property in the State was taxed; but under an act passed in 1883 the legislature attempted to exempt from taxation embankments, tunnels, cuts, ties, trestles, and bridges (page 99). The court declared this provision of the statute in conflict with the constitutional provisions and therefore void. The court upheld the act declaring that attempted exemption only was void (page 102).

In the case of State Freight Tax, 15 Wal., 232, the court declared invalid part of the statute of Pennsylvania which in its terms was broad enough to tax interstate commerce, but sustained the act so far as it applied only to *intra*state matters (page 282).

In the case of the Diamond Glue Company *vs.* The U. S. Glue Co., 187 U. S., 611, the court upheld the statute of Wisconsin requiring foreign corporations to file copies of their charges before doing business in that State. This is also a statute which might have affected interstate commerce, but was upheld as to its operation within the State. Another objection to the statute was that it applied to partner-

ships and unincorporated associations contrary to article 2, section 4, of the Constitution of the United States. The court, however, held that the provisions were separable and sustained the statute.

In the case of the Employers' Liability Cases, 207 U. S., 463, an act of Congress was under review and certain portions of it were held void. In this case paragraphs 1, 3, and 4 of the syllabus are as follows:

> "In testing the constitutionality of an act of Congress this court confines itself to the power of Congress to pass the act and may not consider any real or imaginary evils arising from its execution.
>
> "An act addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employees, without qualification or restriction as to the nature of the business at the time of the injury, of necessity includes subjects wholly outside of the power of Congress under the commerce clause of the Constitution.
>
> "The legislative power of Congress over the District of Columbia and the Territories is plenary and does not depend upon the special grants of power, such as the commerce clause of the Constitution."

In El Paso *vs.* Gutierrez, 215 U. S., 87, the same act was under review and its provisions was sustained so far as they applied to the District of Columbia. Paragraphs 2, 4, and 5 of the syllabus are as follows (See also pages 96 and 97, citing Hyde *vs.* Southern Railway, 31 App. D. C., 466):

> "The power of Congress to regulate commerce in the District of Columbia and Territories is plenary and does not depend on the commerce clause, and a statute regulating such commerce necessarily supersedes a territorial statute on the same subject.
>
> "The rule that the court must sustain an act of Congress as constitutional unless there is no doubt as to its unconstitutionality also requires the court to sustain the act in so far as it is possible to sustain it.

"This court did not in its decision of the Employers' Liability cases, 207 U. S., 463, hold the act of June 11, 1906, c. 3075, 34 Stat., 232, unconstitutional so far as it related to the District of Columbia and the Territories, and expressly refused to interpret the act as applying only to such employees of carriers in the District and Territories as were engaged in interstate commerce."

In the South Western Oil Company *vs.* Texas, 217 U. S., 114, the court had under review the statute of Texas imposing taxes upon oil and oil companies. The law imposed taxes upon wholesale dealers of certain articles and did not impose a similar tax on wholesale dealers of other articles. This discrimination, however, was held to be within the power of the State legislature, and the act was sustained. This case contains an interesting and instructive review of some of the taxation cases decided by that court (pages 122, 123, 124, 125). The principles announced by the court were stated in paragraphs 3, 4, 5, and 6 of the syllabus as follows:

"Whether the severity of penalties for non-conpliance with a State statute renders it unconstitutional under the Fourteenth Amendment will not be considered in an action in which the State does not ask for any penalties.

"The Fourteenth Amendment was not intended to cripple the taxing power of the States or to impose upon them any iron rule of taxation.

"This court will not speculate as to the motive of a State in adopting taxing laws, but assumes—the statute neither upon its face nor by necessary operation suggesting a contrary assumption—that it was adopted in good faith.

"Except as restrained by its own or the Federal Constitution, a State may prescribe any system of taxation it deems best; and it may, without violating the Fourteenth Amendment, classify accupations, imposing a tax on some and not on others, so long as it treats equally all in the same class.

"An occupation tax on all wholesale dealers in certain specified articles does not on its face deprive wholesale dealers in those articles of their property without due process of law or deny them the equal protection of the law because a similar tax is not imposed on wholesale dealers in other articles, and so held as to the Kennedy act of Texas of 1905 levying an occupation tax on wholesale dealers in coal and mineral oils.

It is respectfully suggested that no defect appears of a nature sufficiently serious as to justify the annulment of the act *in toto*.

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